

# TranState Working Papers

PROSPECTS FOR A  
EUROPEAN WELFARE STATE  
LESSONS FROM WELFARE  
STATE DEVELOPMENT IN SIX  
OECD-FEDERATIONS

Herbert Obinger  
Stephan Leibfried  
Francis G. Castles

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Universität Bremen • University of Bremen  
Hochschule Bremen • University of Applied Sciences  
Internationale Universität Bremen (IUB) • International University Bremen (IUB)

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Staatlichkeit im Wandel • Transformations of the State  
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*Herbert Obinger, Stephan Leibfried and Francis G. Castles*

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Universität Bremen

Sonderforschungsbereich 597 / Collaborative Research Center 597

Staatlichkeit im Wandel / Transformations of the State

Postfach 33 04 40

D - 28334 Bremen

Tel.:+ 49 421 218-8720

Fax:+ 49 421 218-8721

Homepage: <http://www.staatlichkeit.uni-bremen.de>

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**ABSTRACT**

This paper uses the findings of a very recent major international research collaboration on the impact of federal arrangements on the development of the welfare state to explore the possibilities of progress beyond Europe's present diversity of nation-state welfare standards. These findings – based on the longterm historical experience of the OECD's oldest federations – suggest that federal arrangements tend to slow down welfare state consolidation, but that much depends on the context of historical development. The emergence of bypass mechanisms circumventing federal veto-points is located as the key to welfare progress, and the role of regulation in European integration and the special role of the ECJ as well as that of 'the open method of co-ordination' are tentatively identified as possible EU bypass equivalents.

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## **Prospects for a European Welfare State.**

### **Lessons from Welfare State Development in six OECD-Federations**

#### **INTRODUCTION**

Arguably, the welfare state is the most important source of output legitimation in the modern state and a powerful device for promoting social integration in divided societies. The welfare state is not only recognised as an instrument for mediating class conflict but also as a mechanism of nation- and state-building capable of containing centrifugal forces in ethnically and politically divided nations (Banting 1995; 2004).

All these functions are of immediate relevance to the situation of the European Union. Given the EU's frequently lamented lack of input legitimation and its multi-cultural and multi-ethnic make-up, the emergence of a European welfare state might not only help in overcoming the numerous societal and economic cleavages in Europe, but also strengthen European identity and the legitimacy of EU-authorities. Moreover, the deepening of EU economic integration in recent decades has increased the pressure for a strengthening of the social dimension of Europe in order to level out the asymmetry of economic and political integration (Scharpf 2002).

This essay evaluates the prospects for the emergence of a European welfare state based on the past experience of welfare state consolidation in six affluent OECD federations. They are, in alphabetical order, Australia, Austria, Canada, Germany, Switzerland and the United States of America. Applying these findings to the European multi-level system, we argue that Europe is caught in a *development trap*, arising from a joint-decision trap and deep political and economic cleavages. We analyse the mechanisms that make it difficult for Europe to overcome its built-in institutional rigidities and launch major social transfer programs at the European tier with a view to enhancing output legitimation and deepening social cohesion. Moreover, we suggest that the experiences of European and New World federations provide powerful insights for understanding prevailing modes of European social policy development, including 'bypass strategies' such as the Open Method of Co-ordination (OMC), and regulatory strategies of policy development.

First, we provide a brief survey of theoretical accounts of the ways in which multi-level systems impact on the dynamics of welfare state development and patterns of welfare provision. We then report core findings of a recently completed collaborative research project in which we examined the impact of federalism on welfare state development in the six classic federations in the OECD-World. Finally, we use these findings to analyse the patterns of and the prospects for social policy development at the European level.

## **1. WELFARE STATE DEVELOPMENT IN MULTI-LEVEL SYSTEMS: THEORETICAL APPROACHES**

Typically, the EU is described as a multi-level or quasi-federal system that allocates policy jurisdiction across several tiers of government and where actors from the different levels are involved in the decision-making process at the central tier. More specifically, we may describe such a system as

- a set of institutional arrangements and decision rules at the central level for incorporating territorially-based interests; these arrangements vary in the degree to which they provide veto powers to subordinate branches of government;
- a set of territorially-based actors with ideas and interests that vary greatly in number and heterogeneity;
- a set of jurisdictional arrangements for allocating policy responsibilities between different levels of government; this refers to both policy-making and policy-implementation;
- a set of intergovernmental fiscal transfer arrangements; and
- a set of informal arrangements—both vertical and horizontal—between governments.

What are the repercussions of such an institutional arrangement for welfare state development? More specifically, what are the chances for deepening the positive integration of social affairs in Europe under circumstance of quasi-federal decision-making? Previous systematic comparative research and most theoretical accounts of the field suggest that the prospects for such an endeavour are not very favourable. Econometric research depicts federalism and decentralisation as stumbling blocks for the emergence of big government in general and a generous welfare state in particular (cf. Cameron 1978; Hicks/Swank 1992; Schmidt 1997; Castles 1999; Huber/Stephens 2001; Swank 2002; Cusack/Fuchs 2003; Ravishankar 2004): “In fact, one might point to the federalism/social policy linkage as one of the very few areas of unanimity in the literature, with writers from all the main competing explanatory paradigms arguing that federal institutions are inimical to high levels of social spending” (Castles 1998: 82).

The two main explanatory paradigms focussing on public policy outcomes in territorially fragmented polities are theories of fiscal federalism and various strands of political institutionalism. The first group of theories derives from economic reasoning and argues that federalism is a significant institutional constraint on government growth. The size of government declines as taxes and expenditures are decentralised (Hayek 1976; Brennan/Buchanan 1980). The absence of interstate tariffs, the presence of the free movement of persons and capital between political units, and fiscal competition between constituent units are seen as having significant consequences for social policy development. In particular, competition between the constituent units makes it difficult



for sub-state units to introduce benefits that will transform them into ‘welfare magnets’ or to increase taxes that will lead to the flight of capital and tax-payers.

Political institutionalism also provides powerful arguments that vertical power separation is inimical to comprehensive social policies. A *first* argument emphasises indirect and long-term effects of federalism on the political economy and its actors. Federalism indirectly influences welfare states by affecting a broad array of other socio-economic and political variables that, in turn, affect trajectories of welfare state development. Federalism is founded on and generates diversity, encouraging the emergence of territorially diverse political economies, each with its own set of deeply rooted political interests and values. Swank (2002) for example notes that dispersion of policy-making authority diminishes the size of political interests, undermines their unity and the coherence of their strategies, and reduces the availability of conventional political resources. Federalism thus modifies the political capacities and power resources of key actors such as parties, unions and business organisations, undercuts the formation of national policy strategies and makes the formation of powerful welfare state alliances more difficult.

A *second* line of institutional reasoning maintains that the institutional safeguards of the federal settlement, including bicameralism, referendum procedures and constitutional courts, involves an inherent and highly pronounced vertical separation of powers (Lijphart 1999: 186). However, such separation of powers necessarily creates a proliferation veto players and, hence, is a barrier to policy change (Tsebelis 2002).

A *third* kind of argument stems from the fact that federal systems are necessarily, to some extent, joint-decision systems, i.e. ‘constellations in which parties are either physically or legally unable to reach their purposes through unilateral action and in which joint action depends on the (nearly) unanimous agreement of all parties involved’ (Scharpf 1997: 143). Thus, from a procedural perspective, altering the status quo in territorially fragmented political systems requires the co-ordination of fragmented resources of action. Since federal systems inflate the number of actors involved in the policy-making process (Pierson 1995: 455), and because sub-governments frequently pursue their own strategies in a given policy field, any major policy change requires the co-ordination of multi-layered interests and the approval of a host of actors who have to bargain until they agree on a joint course of action and—especially important for social policy—on the cost-sharing associated with this course. A joint course of action is particularly difficult to realise if the number of constituent units is high and if deep ethnic, political and socio-economic cleavages exist. If decisions in intertwined systems of decision-making require the consent of sub-governments by means of super-majority or even unanimity requirements, then it is likely that a joint decision trap will occur, resulting in policy stalemate, sub-optimal policy outcomes and lowest-common-denominator policies (Scharpf 1985).

Finally, a *fourth* institutional line of reasoning focuses on the ways in which path dependency and policy pre-emption limit the scope for subsequent policy change (Pierson 2004). Taking theories of path dependence seriously requires us to turn back to history and examine forms and patterns of early policy pre-emption. It is not only important to identify when such initiatives occurred, but also which tier of government was first in taking them. Hence, the initial jurisdictional arrangements of federal states in social and fiscal policy may be seen as having structured and channelled the trajectories of their subsequent welfare state development. It is, for instance, very likely that policy pre-emption by lower tiers of government may hamper the centralisation of social policy in subsequent years.

Although the main thrust of the theoretical speculation in this area has strongly reinforced the view that federalism is inimical to welfare state development, an institutional approach does not predetermine such a conclusion. Given certain institutional configurations and actor constellations, federalism also may function as a welfare state catalyst or be policy-neutral. With respect to fiscal competition, for example, much depends on the design of the tax system, the taxing powers conferred on sub-governments and the system of fiscal equalisation between different tiers of government (Oates 1999). If sub-state governments' budgets are funded by revenue-sharing or by intergovernmental grants, they have a strong incentive to 'overfish' common pool resources, since horizontal tax competition is undermined and sub-governments can exploit resources collected at other tiers of government (Rodden 2003). Under these circumstances, decentralisation may even stimulate the size of the public sector. Another source for such an effect might be policy experiments undertaken by lower tiers of governments associated with spillover effects to the federal tier or horizontally to tiers at the same level ('races to the top or the middle ground') and with competitive innovation by different tiers of government. Finally, a braking effect of federalism is much less likely to occur in settings where the central state has pre-empted the policy field from an early date.

Hence, from a theoretical vantage point, the potential effects of federalism on welfare state development are indeterminate. There is, moreover, strong evidence that such effects are neither invariant across space nor time. Different federal setups operate in different ways and they operate differently at different stages of welfare state development. Like other institutional effects, they are contingent on institutional configurations, actor constellations, actor orientations and on a broad range of contextual parameters. In particular, they may depend on specific

- jurisdictional splits and fiscal transfer arrangements,
- veto points, i.e. the secondary institutions of federalism,
- characteristics of the welfare clientele, e.g. whether beneficiaries are viewed as deserving and whether they are well-organised and geographically concentrated,

- policy feedbacks, including effects on clientele organisation and power resources,
- the government's budgetary situation, and
- partisan configurations, the nature of the party system, the power of the interest organisations of labour and capital and the institutionalised interaction between them.

Given this contingency of outcomes, the concrete impact of federalism on social policy has to be analysed empirically. As already mentioned, the econometric evidence is compelling and strongly backs the hypothesis that vertical fragmentation of powers reins in big government. However, macro-quantitative cross-unit studies report average effects, but do not tell us much about the causal mechanisms by which such effects are generated in specific cases (Gerring 2004). Moreover, the role of sequencing, complex interactions between independent variables, critical junctures and contextual parameters cannot be identified by such an approach (Mahoney/Rueschemeyer 2003). However, this is precisely where case studies and small-N comparisons have a real value in revealing the complexity of particular chains of causation and what they do and do not have in common. This then was the impetus and rationale for a major collaborative research endeavour designed to produce a qualitative and historically nuanced account of welfare state development in six European and New World federations. Relying on case studies, written by leading scholars from each of these nations, our intention was to locate the mechanisms by which vertical power separation has influenced the dynamics of social programme development over a period of more than 120 years and to identify how, in turn, the development of the welfare state has impacted back on the institutions of federal government in these nations. In the next section, we summarise core findings of this comparative analysis and continue then by applying these findings to the contemporary circumstances of the European Union.

## **2. THE DEVELOPMENTAL DYNAMICS OF SOCIAL POLICY DEVELOPMENT IN SIX FEDERAL STATES: TOP-DOWN VS. BOTTOM-UP**

Our findings with respect to the early consolidation stage of the welfare state suggest that types of federalism as well as political regime types are pertinent to the developmental trajectory of welfare states. In all those federations which have been *democratic* throughout the course of the twentieth century and where the type of federal arrangement was initially based on a policy-related separation of powers (interstate or dual federalism), welfare state consolidation took place later and the pace of social expenditure growth was slower than in the majority of unitary states at a comparable level of economic development. Austrian and German development was quite different. These countries were welfare state pioneers, but their early social policy consolidation oc-

curred under non-democratic auspices. They were, moreover, nations whose federal arrangements showed a strong leaning toward intra-state or co-operative federalism from the outset.

By identifying democratic federalism as a major impediment at the formative phase of welfare state development, our main findings dovetails neatly with the evidence from comparative statistical research. It was democratic federations that were in the majority, and it is their retarding effect on programme adoption, and, hence, on the initial stages of programme expenditure growth, that has been picked up in the statistical studies. However, in contradistinction to the necessarily undifferentiated conclusions of such studies, our historical, ideographic approach allows us to locate the precise circumstances under which federalism matters and to identify the underlying mechanisms explaining why federalism has been an impediment in some contexts and not in others.

A key consideration in these differential dynamics of federal welfare states is the question of which tier of government first occupied the welfare state terrain. Of central importance, therefore, is the original distribution of jurisdictions among levels of government. The programme impeding and expenditure restraining effects of federalism can be seen most clearly in democratic federations with interstate federal arrangements, where the federal level of government originally had little or no power to take up social policy concerns and the scope for federal fiscal manoeuvre was relatively limited. In such instances, the take-off of the welfare state was delayed until the necessary powers had been acquired. Because they either lacked or shared social and fiscal policy competencies, federal authorities could not act unilaterally but only in collaboration with the constituent units.

This meant that social policy frequently got stuck in a kind of jurisdictional game of hide-and-seek: While the federal level lacked the power to launch national social programmes, constituent units were often hesitant to establish welfare programmes unilaterally as they feared the competitive disadvantage of pioneer status. Such considerations were of particular relevance in North America in the period prior to the Great Depression and were further strengthened by the complete absence or weak development of systems of fiscal equalisation. Although fiscal equalisation was a stronger theme in Australian institutional development, the inter-war failure to initiate a scheme of child endowment was a classical instance of jurisdictional hide-and-seek. On the other hand, there were also instances where constituent units and municipalities established social programmes at the local and regional level. Swiss federalism with its emphasis on local autonomy rather than horizontal competition is a clear case in point. Here, local policy pre-emption has not only delayed programme adoption at the federal level, but has also reduced the degrees of freedom available for future federal social policy initiatives by

reducing the capacity of the federal government to penetrate locally grown social programmes.

As a consequence of limited federal powers and local policy pre-emption, welfare state consolidation took place from the bottom up in all the democratic federations. Prompt upward redistribution of competencies was blocked through a series of institutional veto points, with the multi-tiered negotiations required to remove such obstacles necessarily involving a considerable number of actors with often conflicting interests. Rigid procedures of constitutional amendment and judicial review have repeatedly struck down federal intrusions in social affairs. In cases where a reallocation of jurisdictions was unsuccessful, the only way for the federal government to launch social policy initiatives was to provide federal grants to the constituent units of the federation.

Processes of these kinds were largely absent in Germany and Austria. Neither country was a fully developed democracy until 1918 and judicial review was unknown. Moreover, the constitutional system of the Habsburg Empire was, at best, proto-federal in character. Early and comprehensive policy pre-emption of the welfare state at the central level in both countries was the major reason for unhindered and speedy social policy expansion in the years thereafter. Several contextual factors accelerated welfare state consolidation under both monarchies. An important factor was the legitimacy requirement of a conservative elite that found itself confronted with a growing working class movement demanding more extensive political participation. Moreover, the contribution-based funding of programmes provided a mechanism for continued welfare state growth, given that fiscal conflicts between different levels of government could be neatly sidestepped by externalising costs to employers and employees through the para-fiscal mechanisms of the social insurance system. Moreover, a political culture of state-centred reform embedded in an ‘enlightened’ absolutism sustained a ‘top-down’ welfare state reform pattern. Finally, these early welfare state building initiatives were aspects of state and nation-building processes, making social policy a catalyst for the reinforcement of unitary trends in political and administrative development. In Germany, after 1871, social insurance policy became an important instrument for the consolidation of the new Reich. Nation-building was also important in the Habsburg Empire, since the emergence of welfare institutions was seen as a means of countering the strong centrifugal forces in a multi-ethnic empire.

In consequence, a great gulf already separated Germany and Austria from the democratic federalist welfare state laggards by the late 1920s. In the former, welfare state consolidation was largely accomplished, while, in the latter, it had, in respect of the vast majority of programmes, yet to begin. Over the next two decades, external shocks—economic depression and total war—influenced social policy development in both types of federal setting, but in ways that reflected their prior contexts of development. In the

long-time democratic federations, external shocks provided an impetus for overcoming entrenched veto-point opposition, especially where the party in office was one favouring reform. In the United States, economic crisis was the major catalyst of change. In Australia, the wartime crisis provided the occasion for centralisation of the tax system and an extension of the social services role of the Commonwealth, with the longest Labour administration since Federation as its agent. In Canada, despite the lack of a left party impetus, wartime conditions had very similar effects. Even in neutral Switzerland, World War Two was a major catalyst for expanding the social and fiscal powers of the federal government. Thus, by the mid-1940s, basic competencies for a major federal role in social policy were substantially developed in all these countries

After the war, once a full array of programmes was in place, and democratic institutions were fully developed, the welfare state became an important source of credit claiming and partisan competition. Hence, the partisan complexion of government was the primary factor shaping the trajectory of social expenditure growth in the post-war period. However, the way in which party politics was played out continued to be strongly influenced by the character of governmental (and federal) institutions. Canada is a case in point because the country's social programmes are embedded in and governed by different forms of intergovernmental relations (Banting 2004). Political gridlock was most pronounced in the field of contributory pensions where policy making is based on joint-decision federalism and framed by a vertically incongruent party system. It was almost completely absent where a classical division of powers prevailed as was, for instance, the case in respect of unemployment benefits. Moreover, different policy instruments—social insurance, means-testing and universalism—have diverse potentials for expenditure growth, and particular policy strategies chosen in the past have a path dependent impact on the policy options favoured in the here and now.

In addition, governments have learnt to cope with the institutionally inbuilt complexity of federal arrangements and have increasingly relied on bypass strategies. The emergence of such mechanisms results from a functional problem of all evolving democratic federal systems in the modern era: how to get around inbuilt constitutional rigidities to institute and deliver the welfare programmes and reforms demanded by democratic electorates. Federal constitutions are deliberately designed to inhibit change or, at least, to slow down changes which alter the balance of power and responsibility between state and federal jurisdictions. Thus, those who seek to affect change must find a way around existing institutional barriers. In our research, we identify three bypass strategies, which differ from federation to federation (see table 1). These bypass strategies have not only influenced patterns of benefits provision but have also channelled and shaped the public-private mix in social policy over the long term.

**Table 1:** Bypass structures in six OECD-federations

<i>Bypass</i>	<i>Description</i>	<i>Exemplary countries</i>
<b><i>Patchwork quilt</i></b>	An array of discrete agreements between federal and state authorities gives lower tiers of government control over aspects of social policy initiation and implementation, while compelling them to carry out national programmes. One important route to overcome lacking federal social policy competencies was to rely on the federal spending power for providing grants to subordinate governments but increasingly also to employers and employees. Going beyond some conceptions of federalism, where each program is run and financed by a single level of government, the patchwork quilt may be based on <i>joint decisions</i> , whereby agreements require approval by both levels of government, or run on a <i>shared-costs basis</i> , with the federal government simply providing financial support for multi-tier programmes.	Canada, USA
<b><i>Regulatory</i></b>	The state mandates <i>private</i> parties to pay for and provide certain benefits, such as pensions, health care, etc. Most regulation concerns <i>employers'</i> provisions to employees. Mandates may be hard ( <i>binding</i> ) or soft ( <i>optional</i> ). In the latter case, the effectiveness of regulation is dependent on the largesse of tax deductions or subsidies. In Australia the federal arbitration system used its power to control wages in order to provide a social policy minimum, and, thus, in principle, removed the need for specific poverty alleviation measures. It also served as the legal authority for providing mandated benefits such as sickness expenditure and, initially, second-tier pensions and in the process not merely bypassed the states and federation as providers of benefits, but also the federal executive and legislature as makers of social policy decisions.	Australia, Switzerland
<b><i>Para-fiscal (or, when fully developed para-state)</i></b>	Multi-level governance problems were avoided by creating a new sub-level (the <i>parafiscus</i> ), regularly also spun off organisationally, creating new exit options for offloading costs from the state or federal level to the <i>parafiscal</i> level. Hence institutionalized <i>independent</i> public agencies, mandated by the state but with their own tax base (contributions) <i>outside</i> of the state's general budget ( <i>para-fiscus</i> ), manage the delivery of benefits. These agencies, in addition, often have an <i>independent power base</i> of employer associations and unions, with state representatives from various levels of federalism serving as arbiters between and amongst the 'social partners'. In its most fully developed form, with almost half of public finances dedicated to the <i>para-fiscus</i> , independent agencies are so pervasive they form an effective para-state.	Austria, Germany

To sum up, a comparative analysis of Western federal states shows that two dimensions of distributional conflict interact when federalism meets the welfare state, namely (1) the (re)distribution of (mostly) money between social classes (and regions), and (2) the distribution of power between tiers of government. The consolidation of the welfare state in these six federations was mainly determined by the extent to which the distribution of power allowed social policy to unfold and that was driven by how conflictual these politics were. Two aspects seem crucial here: on the one hand, the level of democratic development at the time the welfare state emerged and, on the other, the type of federalism dictated by constitutional arrangements. *Intra*-state (cooperative) federalism allows federal level social policy to flourish early on, whereas *inter*-state (dual) federalism tends to protect the political status quo, and, thus, to retard welfare state growth.

These institutional factors have been overlaid by social interest patterns: if there were fewer regional cleavages—in the party system and the economy—it was much easier to nationalize power than where regionalism was strong or where there was substantial ethnic or economic fragmentation. We now draw on these conclusions to identify the dynamics of European social policy development and to evaluate the prospects for a European welfare state.

### **3. LESSONS FOR THE EUROPEAN UNION**

Politically, the situation in the EU has some resemblances to conditions in Germany and Austria in the late 19<sup>th</sup> century. Though the EU is clearly not an autocratic regime<sup>1</sup>, most scholars, agree that Europe suffers from a democratic deficit. Just as in the Germanic federations in the late 19<sup>th</sup> Century, improving internal cohesion and creating a common identity are core contemporary issues in the EU. Moreover, and with clear parallels to the Habsburg monarchy, the Union is highly fragmented in both national and economic terms and therefore in need of a strengthening of integrative and centripetal forces. Hence, expanding common social policy beyond the level already achieved (cf. for an overview Leibfried/Pierson 1995, 2004; Falkner 1998; Geyer 2001) might, amongst other things, be considered an strategy for reinforcing a European identity and improving the output-legitimation of EU institutions. A common social policy would also assist in overcoming the “constitutional asymmetry” between policies promoting market efficiencies and policies promoting social protection and equality (Scharpf 2002). Without such policies, it seems quite probable that the forces unleashed by negative integration will induce a competitive downward spiral in benefit provision at the Member State level, in turn, weakening the cohesion of the Union in the long run.

However, while Imperial Germany and Austria found it relatively easy to launch social policy from the top down, the situation of contemporary Europe is unique in several respects, making a federal European welfare state a rather unlikely prospect. In order to develop the logic of this argument further, we apply our findings with respect to welfare state formation in six federations to the contemporary circumstances of the European Union. Specifically, we discuss the explanatory factors we have identified as influencing social policy development in federal states, showing how they help us to explain previous and contemporary patterns of EU social policy.

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<sup>1</sup> Late 19<sup>th</sup> century Germany had some proto-democratic features, most notably universal manhood suffrage for the Lower House of parliament. Imperial Austria, with a franchise restricted to 9 per cent of the adult population, did not.



### **3.1 Policy pre-emption**

In contrast to the six federations examined in our study, the social policy terrain in Europe is comprehensively pre-empted by the Member States. Historically, the development of the welfare state in Europe was intimately connected with the emergence of the modern nation state (Flora 1986). From the outset, solidarity and legitimation issues were strongly related to the concept of the nation. One, perhaps overly cynical, view of the welfare state is to see it as a device for redistributing money between people sharing a common language and similar cultural norms. In the context of heterogeneous societies, however, it has been argued that ethnicity and territorial differences have constituted more limited and spatially separated entities of solidarity, potentially impeding the emergence of a comprehensive and redistributive welfare state at the national level. In a similar vein, it can be argued that contemporary Europe is characterised by territorially fragmented spaces of solidarity with default lines running along the borders between the Member States, thereby limiting the chances of supplementing much less replacing national social programmes with uniform community wide schemes. Moreover, within Europe, the nation-based welfare state remains a powerful source of legitimation for national governments. Since we know from many surveys that the welfare state is extremely popular amongst European mass electorates, both citizens and the governments of the Member States are likely to resist any transfer of social policy related powers. For instance, Eurobarometer data, mapping the preferences of citizens in the EU15 Member States with regard to their preferred locus of social policy making, suggest that only about one third of the population supports a shift of social policy jurisdiction to the Union (Mau 2003: 311).

It would therefore appear to be the case that welfare state building in Europe is subject to intrinsically similar constraints as those governing competitive state-building in Canada (Banting 1995). As the dispute between Ottawa and Quebec over the authority in social policy-making reveals, legitimation issues can lead to severe tensions over the locus of benefit provision. However, the popularity of national welfare states creates a powerful status quo bias. In terms of welfare regime patterns, social policy pre-emption at the nation state level has created a patch-work quilt that has become increasingly Byzantine during the several waves of European enlargement (Scharpf 2002). Since the recent Eastern enlargement, no less than five different welfare regimes can be distinguished in contemporary Europe, which differ in respect of funding principles, forms and levels of benefit supplied and degrees of inclusiveness, thereby reflecting the different political power constellations and national policy legacies from which they have emerged. With the benefit of hindsight, it is possible to conclude that the window of opportunity for the supersession of national social programmes by European schemes has diminished with each successive wave of enlargement, because each increase in mem-

bership has multiplied the number of the constituent units and thereby increased the number of potential veto players potentially opposed to greater uniformity of provision.

Apart from the interests of the Member States in retaining their own powers and in enhancing their own legitimacy, a broad array of private interests have crystallised around the existing social programmes in the Member States. As a result, the policy status quo is generally defended not only by national governments but also by entrenched interests, such as the medical profession. As Scharpf (2002: 651) points out, “German doctors and patients would unite in protest against any moves toward a British-style National Health Service”. Again, important lessons can be learnt from welfare state development in federal nation states. In particular, the Swiss experience demonstrates the mechanisms through which local policy pre-emption and the vested interests surrounding these programmes constrain the ability of the central government to enact uniform and redistributive social policy. Given the Swiss federation’s initial lack of powers in the latter half of the 19<sup>th</sup> Century, the impact of industrialisation was first encountered at municipal and cantonal level, giving an impetus to local schemes and the emergence of a heterogeneous web of local social security arrangements. Using the numerous veto points enshrined in the Swiss constitution, local programme carriers, business and regional interests were able, in the short to medium-term, to fend off the intrusion of the federal government in social affairs. As a consequence, federal social programmes were either delayed or structurally pre-configured by locally adopted solutions or the federal government had to limit its role to the provision of subsidies to these programmes. Frequently, moreover, the federal government was only capable of enacting framework legislation stipulating minimum social standards. Sometimes, it was constrained from action of any sort.

The lesson to be drawn is that the interplay between policy pre-emption, entrenched interests and institutional veto points is an important key to understanding the dynamics of welfare state building in multi-level systems. The more comprehensive is the policy space pre-empted by lower tiers of government and the more veto points are available, the less likely it is that jurisdictional competencies will be reallocated between different levels of government or that uniform policy solutions will be adopted. These are the circumstances currently prevalent within the EU. Not only are social policies fully developed at the level of the Member States, but vested interests and national governments also face extraordinarily favourable opportunities to defend the status quo. As we point out in the next section, the institutional rigidities and high thresholds of consensus necessary to alter the status quo built into the European multi-level system provide powerful leverage for countering moves towards European welfare state development.

### 3.2. Policy jurisdiction and institutional rigidities

The comparison of OECD federations has revealed that the initial distribution of powers between different levels of government and the institutional checks and balances enshrined in their constitutions have substantially impeded policy reform. This was particularly true for interstate federal arrangements based on a policy-related separation of powers. In order, then, to ascertain the prospects for a European welfare state one obvious step is to examine the social policy related powers as they are spelled out by the European Treaties. This analysis is to be found in Table 2, which identifies the assignment of explicit social policy mandates in EU treaty documents from the Treaty of Rome to the Rome (II) Constitutional Treaty of 2004.

**Table 2:** *The assignment of explicit<sup>a</sup> social policy mandates to the European Union from the Treaty of Rome to the Rome (II) Constitutional Treaty.*

Field of mandate	European Economic Community EEC	Single European Act (SEA) EEC	Maas-tricht Treaty EC-MT	Social Protocol SP	Amsterdam Treaty EC-AT	Nice Treaty EC-NT	Rome (II) Constitutional Treaty EC-CT
	1957 (1958)	1986 (1987)	1992 (1993)	1992 (1993)	1997 (1999)	2000 (2003)	2004 (?)
Discrimination on grounds of nationality	Unan 7	No ref	QMV 6	No ref	QMV 12	QMV 12	QMV III-123
Other antidiscrimination measures, harmonization excluded	No ref	No ref	No ref	No ref	QMV 13 (2)	QMV 13 (2)	QMV III-124 (2)
Free labour movement	Unan 48-50	QMV 48-50	QMV 48-50	No impact	QMV 39-40	QMV 39-40	QMV III-133-134
Gender equality in pay <sup>b</sup>	(Unan) 119	(Unan) 119	(Unan) 119	(Unan) 6	QMV 141	QMV 141	QMV III-214
Gender equality for labour force <sup>b</sup>	No ref	No ref	No ref	QMV 2 (1) v	QMV 137 (1) v	QMV 137 (1) i	QMV III-210 (1) i]
Working environment	No ref.	QMV 118°	QMV 118a	QMV 2 (1) i	QMV 137 (1) i	QMV 137 (1) a	QMV III-210 (1) a
Working conditions (outside former Art. 118a, line 6)	No ref	No ref	No ref	QMV 2 (1) ii	QMV 137 (1) ii	QMV 137 (1) b	QMV III-210 (1) b
Worker information and consultation	No ref	No ref	No ref	QMV 2 (1) iii	QMV 137 (1) iii	QMV 137 (1)e	QMV III-210 (1) e
Integration of persons excluded from labour market <sup>c</sup>	No ref	No ref	No ref	QMV 2 (1) iv	QMV 137 (1) iv	QMV 137 (1) h	QMV III-210 (1) h
Combating of social exclusion	No ref	No ref	No ref	No ref	No ref.	QMV 137 (1) j	QMV III-210 (1) j
Modernisation of social protection systems	No ref	No ref	No ref	No ref	No ref.	QMV 137 (1) k	QMV III-210 (1) k
Public Health	No ref	No ref	QMV 129	No ref	QMV 152	QMV 152	QMV III-278
Social security coordination	Unan 51	Unan 51	Unan 51	n. a.	Unan 42	Unan 42	QMV III-136 (but see III-136 (2))
Harmonization of other antidiscrimination measures (see line 2) <sup>d</sup>	No ref	No ref	No ref	No ref	Unan 13 (1)	Unan 13 (1)	Unan III-124 (1)

Field of mandate	European Economic Community	Single European Act (SEA)	Maas-tricht Treaty	Social Protocol	Amsterdam Treaty	Nice Treaty	Rome (II) Constitutional Treaty
	EEC	EEC	EC-MT	SP	EC-AT	EC-NT	EC-CT
	1957 (1958)	1986 (1987)	1992 (1993)	1992 (1993)	1997 (1999)	2000 (2003)	2004 (?)
Social security and protection of workers	No ref	No ref	No ref	Unan 2 (3) i	Unan 137 (3) i	Unan 137 (1) c	Unan III-210 (1) c
Protection of workers (employment contract termination)	No ref	No ref	No ref	Unan 2 (3) ii	Unan 137 (3) ii	Unan 137 (1) d	Unan III-210 (1) d
Collective interest representation, code-termination	No ref	No ref	No ref	Unan 2 (3) iii	Unan 137 (3) iii	Unan 137 (1) f	Unan III-210 (1) f
Employment of third-country nationals	No ref	No ref	No ref	Unan 2 (3) iv	Unan 137 (3) iv	Unan 137 (1) g	Unan III-210 (1) g
Funding for employment policy <sup>c</sup>	No ref	No ref	No ref	Unan 2 (3) v	Unan 137 (3) v	No ref	No ref.
Pay	No ref	No ref <sup>e</sup>	No ref. in 100a (2) <sup>e</sup>	Excl in 2 (6)	Excl 137 (6)	Excl 137 (5)	Excl III 210 (6)
Right of association	No ref	No ref <sup>e</sup>	No ref. in 100a (2) <sup>e</sup>	Excl in 2 (6)	Excl 137 (6)	Excl 137 (5)	Excl III-210 (6)
Right to strike and to impose lock-outs	No ref	No ref <sup>e</sup>	No ref in 100a (2) <sup>e</sup>	Excl in 2 (6)	Excl 137 (6)	Excl 137 (5)	Excl III-210 (6)
Mandates for the Open Method of Coordination <sup>e</sup> (OMC)	Employment				(128) 140 <sup>f</sup>	(128) 140 <sup>f</sup>	III-213 a
	Labour market and working conditions					140	III-213 b
	Professional education and training					140	III-213 c
	Social security					140	III-213 d
	Prevention of occupational accidents and diseases					140	III-213 e
	Protection of health at work					140	III-213 f
	Law of coalitions and collective agreements between employers and employees					140	III-213 g

Notes:

Years given for treaties refer to the signing and (in parentheses) the ratification of the Treaty. Numbers listed in the table refer to articles in each treaty.

Abbreviations used: Unan = unanimity required; QMV = qualified majority voting; No ref = no reference to mandate; n. a. = not applicable; Excl = mandate explicitly excluded.

Heavier shading denotes weaker mandate. Heaviest shading shows explicit denial of mandates, anchored in the treaties only since 1992 in these areas.

<sup>a</sup> As a rule the table refers to *explicit* powers mentioned in the treaties, in contrast to *unspecified general* powers, as under Articles 100 and 235 EEC (since AT 95 and 308 EC) or to *non-enabling* norms (on an exception see note b and note d, para. 2).

<sup>b</sup> Between the original Treaty of Rome and the 1992 Social Protocol the ECJ had interpreted gender equality more and more widely. Article 119 EEC (since AT 141 EC) contained no express enabling clause; respective Directives were based on Article 100 or 235 EEC which required unanimous decisions. In the end AT Article 141 (3) EC in 1997 brought the first special mandate and QMV.

<sup>c</sup> From 1992 to 1997 this *QMV*-mandate excluded the one for *funding*, where *unanimity* was required according to Article 2 (3) v (Social Protocol) and then AT Article 137 (3) EC, thus maintaining anti-poverty spending programmes as highly veto prone.

<sup>d</sup> On top of the original *two* anti-discrimination Articles—gender (equality in pay only; Article 119 EEC, see table lines 4, 5 [and note b], and since AT generally prohibiting any discrimination based on ‘sex’ see lines 2 and 14) and nationality (Article 7 EEC, QMV; see line 1)—dating already to 1957, AT Article 13 EC in 1997 silently added *seven* new anti-discrimination categories: racial or ethnic origin, religion or belief, disability, and age or sexual orientation. These *nine* categories are picked up in lines 1, 2 and 14 of the table.

Article 21 of the European Charter of Fundamental Rights—identical with the Draft CT Article II-81—includes the above and adds *nine* novel categories: colour, social origin, genetic features, language, political or any other opinion, membership of a national minority, property, birth, and disability. Altogether these *eighteen* categories of anti-discrimination serve as *examples* only (‘on any ground such as’) when the 2004 CT becomes law. But CT Article II-81 does *not* give the EU a special regulatory mandate (and see Articles II-111-114). However, as the case of gender equality has shown, these nine categories of EU primary law, together with the open-ended thematic mandate, might produce an unforeseeable dynamics—especially with an ECJ that can rely on long and developed chains of anti-discrimination precedents in nationality and gender (and *seven* new categories to be explored), with gender equality starting out from just that un-mandated situation in 1957 (see note b).

<sup>e</sup> From 1986 to 1997 first SEA Article 100a EEC and then the MT Article 100a (2) EC exempted provisions on taxes, free movement of persons, and on the rights and interests of employees from QMV, but did not preclude action by unanimity, whereas Article 2 (6) of the Social Protocol and the later AT/NT Article 137 (6) EC specifically withholds mandates on pay etc. as such.

<sup>f</sup> Article 128 (2) EC in the new 1997 AT Employment Chapter (Articles 125-130 EC) already spoke of ‘guidelines’ and AT Article 140 EC provided a loose mandate only, with the situation in public health being similarly opaque (see Article 152 (2) versus (4)). The full materialisation of the Open Method of Coordination (OMC) took much longer, and evolved in the main extra-constitutionally, until picked up in 2004 by Article III-213 Draft CT, where OMC-instruments of the Commission are specified in the second paragraph. Already in the 2001 NT the OMC subject areas are listed as *examples*, allowing an extension of OMC to many other like fields.

<sup>g</sup> The term ‘Open Method of Coordination’ is not mentioned in any of the Treaties.

Source: Leibfried (2004).

An initial point to note is a crucial difference between the structuring of interstate federalism and the present framework of European institutions. With respect to social policy, the EU is a unique multi-tiered system, with three distinctive characteristics: a propensity towards ‘joint-decision traps’ and policy immobilism; a prominent role for courts in policy development; and an unusually tight coupling to market-conforming processes (Leibfried 2004). In a manner similar to the democratic federal states, the EC initially had no social policy mandate of any kind. However, it has acquired a considerable range of social policy related competencies over the past two decades. Moreover, barriers to social policy decision making have been relaxed as Qualified Majority Voting (QMV) have been extended to an increasing number of jurisdictions (see table 2). Despite such changes, what distinguishes the EU from the situation of the federal nation states is that decision making at the central level still requires supermajorities and thus an unusually high level of consensus among the Member States. Political deadlock therefore does not primarily emerge from a lack of policy authority, but rather from the rigid and vertically intertwined decision-making rules built into Europe’s system of multi-level governance (Scharpf 1985).

This fundamental barrier to progress has not been substantially altered by the recent enhancement of QMV, since changes to core branches of social policy such as social security still require unanimity. Moreover, a new provision adopted by the Treaty of Nice rules out any harmonisation of the laws and regulations of the Member States (Art. 137 [2] (a)). Instead, the Council may, by means of directives, adopt “minimum re-

quirements for gradual implementation” but such directives shall avoid imposing administrative, financial and legal constraints that may impede the creation and development of small and medium-sized undertakings. In addition to these constraints, directives intended to enact minimum standards in the realm of social security still require unanimity.

Also related to the allocation of powers is the question of whether the centre is fiscally and administratively capable of formulating positive social policy and building a redistributive welfare state. Compared with other ‘multi-tiered’ systems, the EU’s social policy-making apparatus is extremely bottom-heavy (Kleinman/Piachaud 1992a; Pierson/Leibfried 1995; Kleinman 2001). Moreover, the centre is extraordinarily weak in fiscal matters, as it lacks the power to levy taxes and therefore entirely depends on the transfer payments of the national governments. Seen from a historical perspective, however, the administrative and fiscal weakness of the European centre has analogies with the situation of the U.S and Switzerland in the 19<sup>th</sup> century.

A second distinctive characteristic of the EU is that the role of courts differs from that in the six federal states featuring in our research. Whereas in the latter, the general trend of early court judgements was to limit federal social policy initiatives and thus protect the policy autonomy of the constituent units at the expense of nation-wide social programmes, ECJ activism related to economic integration has undercut the sovereignty and policy autonomy of sub-governments. It is widely acknowledged that the ECJ has been a key actor unleashing the forces of negative integration. In other words, the process of market building and its backing by the ECJ has put national welfare states under heavy strain, but these pressures have not been addressed by efforts to re-regulate through the further development of policy at the centre.

This leads to the question of why the centre has remained so inactive with respect to redistributive social programmes. So far we have pointed to the status quo bias resulting from policy pre-emption at the national level, to fiscal and administrative shortcomings and to rigid decision-making rules providing Member States with strong veto powers. Now we turn to the reasons why the supermajorities required for changing the status quo are most unlikely to occur. To this end, it is necessary to examine the political and economic cleavages characterizing contemporary Europe and to map out associated patterns of interest formation.

### **3.3. Political and economic cleavages**

Tsebelis’ veto player theory suggests that it is not sufficient to focus on the number of veto players alone. His core axioms for explaining policy change also refer to the importance of the ideological distance between veto players and their internal cohesion. This suggests that we need to focus on the partisan complexion of member states’ governments and their cohesion if we wish to understand political cleavages in the Euro-

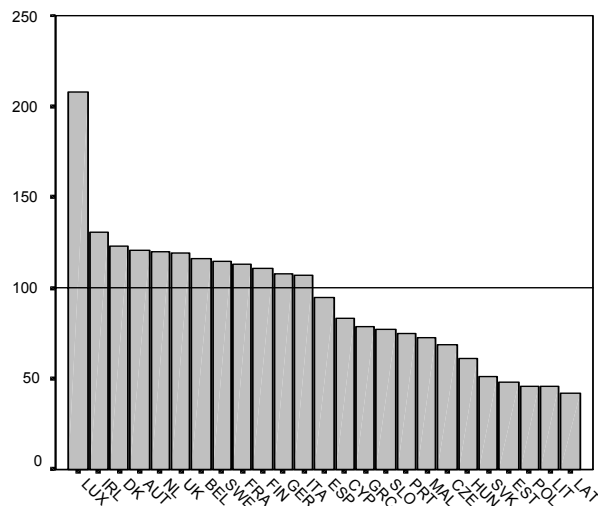
pean Council. Manow et al. (2004: 13-14) have recently shown not only that Europe has become increasingly politically heterogeneous over time, but have also convincingly argued that a knowledge of partisan complexion of national governments is important for understanding the dynamics of EU social policy over time. Just as was the case in respect of the increasing pluralism of welfare regimes patterns over the past forty years, this increasing political fragmentation has occurred in the wake of the several waves of enlargement. Today, the European political landscape reflects the full spectrum of ideological positions, ranging from Swedish-style social democracy on the one hand, to secular conservative and right-wing nationalist parties on the other. Although there has been a convergence of different party families with respect to attitudes toward the welfare state and the market economy, differences remain that are likely to create tensions over social policy making both at the national and European level. The parties programmatically most inclined to pro-welfare state attitudes are not those most forcefully backing the integration process given that “support for integration quite strongly varies inversely with the ‘leftness’ of EU member-state governments” (Manow et al 2004: 13). However, there is some evidence that this trend is changing, as Eurosceptic leftist parties have recently “become distinctly more pro-integration as regulated capitalism has come on the European agenda” (Hooghe et al 2004: 129). At the same time, rightist parties have also begun to selectively oppose European integration in order to avert re-regulation at the European level. As a result, European issues related to redistribution have become more closely aligned to traditional conflicts between the left and right. Despite this being so, Europe’s national governments are now comprised of such a wide, and still diverging, array of political parties and coalitions from across the left-right spectrum, that a cohesive policy action at the European level is most unlikely to emerge.

With respect to internal cohesion, Tsebelis argues that policy stability increases with the internal homogeneity of collective veto players. Increasing cohesion is most likely to occur where national interests and territorially bounded values are at stake. A recent study of political conflict in Europe concludes that EU policies with strong distributional impacts across countries give rise to national coalitions (Marks 2004). Where legitimation issues, national values and topics related to financial obligations and the competitive position of the economy are to the forefront of debate, it seems probable that cohesive forces will become much stronger. Under such circumstances, territorial, (i.e. national) interests may even outweigh ideology. We have already noted that the welfare state is a powerful source of output legitimation that is closely connected to the nation state and which, therefore, pre-configures strong national interests. The same holds true for vital economic issues. To underscore this argument, we briefly illustrate how the substantial economic differences among the EU countries create conflicting interest

patterns and describe the ways in which these conflicts diminish the possibility of changing the status quo.

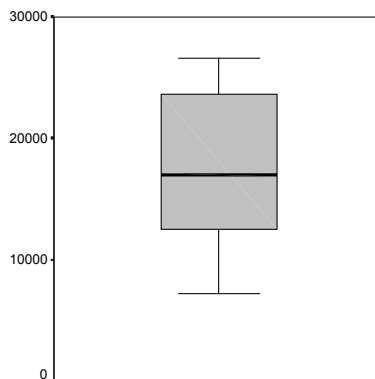
As shown in figures 1 and 2, economic cleavages within Europe are considerable. Figure 1 shows GDP per capita levels in Purchasing Power Standards relative to the EU 25 average, while figure 2 shows a boxplot for the absolute levels of GDP per capita in US-Dollars. Figure 2 shows that, even when we exclude Luxembourg from the calculation, the range of the distribution (the difference between the poorest and the richest country) is higher than the average EU income level. Figure 1 shows that most of the former communist countries enjoy only 50-60 of EU average income. Countries like Romania, Bulgaria and Turkey, that are seeking to join the European Union in the near future, are even poorer, with current income levels of around 30 per cent of the European average.

**Figure 1:** *GDP per capita in 2003 in Purchasing Power Standards, EU25 = 100*



Source: Eurostat: Statistics in Focus, Economy and Finance, 27/2004

**Figure 2:** *GDP per capita in real international Dollars in 24 EU countries*



Source: Penn World Table 6.1. Data refer to 2000 except Malta and Cyprus (= late 1990s). Luxembourg is excluded because GDP is overestimated. This boxplot displays the median, the range as well as the 25<sup>th</sup> and 75<sup>th</sup> percentiles of the distribution of GDP per capita levels.



These huge differences in economic wealth are closely associated with conflicting economic interest patterns. These interests differ systematically as between rich and poor Member States, making tensions over social policy making and, in particular, welfare state funding, more likely. According to neoclassical growth theory, poor nations have a natural competitive advantage deriving from their status as economic laggards. Given capital shortage, low non-wage labour costs, free trade and capital movement, they benefit from the influx of investment and jobs outsourced by the rich countries. To sustain this competitive advantage, governments and especially business organisations in the poorer countries obviously have no major interest in raising social standards. The situation in the rich Member States is precisely the opposite. Facing the competition of low-wage economies with a well-educated labour force, they clearly have an interest in championing the uniform social standards imposed by the Union. At the same time, however, rich countries have an interest in avoiding the financial burden necessary to fund such efforts. Moreover, it is clear that this is a burden that has increased markedly in the wake of the most recent enlargement when only relatively poor countries had joined the EU. Nor is there any obvious prospect of the situation improving. Europe's wealthiest countries, including Norway, Switzerland and Iceland, with GDP per capita exceeding mean income levels by 20 to 50 percent, hesitate to join the Union.

But this is not the only reason why no common denominator can be achieved. Things are made even worse by the fact that preferences in favour of re-regulation at the European level appear to differ as between national populations and their governments. Using Eurobarometer data, Mau (2003) has examined whether the populations of the 15 EU Member States support a transfer of social policy responsibilities from the nation state to the European level. His findings show that attitudes towards European social policies are crucially influenced by welfare regime type and the level of social security hitherto achieved by Member States. Whereas citizens in the Nordic countries are opposed to an enlargement of EU social competencies, because they fear that uniform European social schemes will undercut the high standards of their advanced welfare states, citizens in southern Europe show a greater proclivity to expand the role of the European level in social affairs for precisely the opposite reason. Moreover, existing welfare regimes also structure partisan dispositions toward European integration. Brinegar et al. (2004) find that, in redistributive welfare states, the left opposes further EU integration, whereas, in residual welfare states, it is the right that resists enhanced integration. Political polarization over EU integration is less pronounced in conservative welfare regimes.

In sum, Europe is facing a fundamental social policy dilemma. Though Europe, initially lacked powers to establish social programmes of its own that could compete with those of Member States, it did undermine the policy autonomy and sovereignty of

Member States in social affairs in the process of developing a supranational supremacy in policies related to the establishment of a single market, a process also catalysed and protected by ECJ activism. To cope effectively with direct and indirect spill-over effects on national welfare states imposed by economic integration would, however, require concerted European-wide action on the positive integration front. However, given a fiscally and administratively weak centre and a set of veto players characterized by substantial ideological distance and strong internal cohesion, makes it rather unlikely that the high degree of consensus required for altering the status quo can be achieved. Europe, in other words, is caught in a joint decision trap.

But this is not necessarily the end of the story. At this context, it may be illuminating to examine at the ways in which our six federations managed to overcome the institutional rigidities that stymied their early steps towards welfare state consolidation. Recall that bypass strategies played an important role in facilitating welfare consolidation and that major breakthroughs in the reallocation of powers were only achieved in the context of severe external shocks. The Great Depression and World War II were important critical junctures, which not only led to a centralisation of social and fiscal powers but also fuelled a wave of solidarity among the population that paved the way for welfare state take-off in the post-war period. War and depression are not, of course, eventualities to be welcomed under any circumstances. Indeed, avoiding such eventualities has supplied much for the rationale for post-war EU development. This being so, it becomes clear that Europe's most promising way to deepen social integration is to rely on bypass strategies.

### **3.4 Bypass Strategies**

Having shown that the European joint decision system is unable to overcome its institutional rigidities, we now explore whether the experience of institutional development in our six federal welfare states suggests ways in which bypass strategies could assist in circumventing these blockages.

The experience in the North American federations shows that whenever the federal government was denied the power to legislate on social matters, it could rely on its spending power in order to stimulate programme development at the level of subordinate governments. Moreover, the power to provide grants gave the central government leverage to influence basic principles of programme design. At the same time, the federation's taxing powers opened an avenue for achieving social policy objectives by other means such as tax expenditures and subsidies delivered to privately and occupationally run programmes. However, in light of Europe's fiscal constitution, it should be clear that this bypass route is blocked. The European Union lacks an autonomous financial basis for social policy development since it has no genuine fiscal powers. The Community's budget is fed by payments from the Member States, which are related to

their capacity to pay. Again, a deep asymmetry between the interests of rich and poor Member States, along with the high barriers of consensus required for altering the status quo, precludes any major policy shift in fiscal matters. Moreover, as is well known, the bulk of such revenues goes to the Common Agricultural Policy, therefore crowding out public expenditure devoted to other public policy objectives.

However, semi-sovereignty in fiscal affairs was also the starting point for the majority of federations. As already noted, the fiscal powers of the central state were significantly extended in wartime and in the aftermath of war. However, some of the European federations discovered ways to cope with fiscal shortcomings prior to World War II. Taking the parafiscal bypass route of creating autonomous social insurance agencies, major social programmes were funded through contributions. Political gridlock was avoided by externalizing costs to third parties, i.e. employers and employees, not involved in the bargaining game between different branches of government. However, the parafiscal route is no more available in the current EU context than is financial leverage through grants from the centre. Though corporatism has gained importance in recent years (Falkner 1998), the main roadblock is the variety of welfare regime patterns in the different Member States. Adopting the parafiscal route would automatically imply a structural shift towards the Bismarckian social security model that would not have any appeal to countries with alternative welfare regime patterns. Indeed, given that, in many quarters, the contributory model is blamed for the contemporary economic malaise of the countries of continental Western Europe, it might also not be enthusiastically welcomed by all the countries in the Bismarckian tradition.

Thus, the only bypass route remaining is the regulatory route (cf. Majone 1997). Here, the Swiss and also the Australian experience is intriguing and shows some parallels with the situation of contemporary Europe. Initially, after the Swiss constitution was revised in 1874, labour protection was the only social policy jurisdiction on which the federal government could rely. Although this realm was pre-empted by some industrially advanced cantons<sup>2</sup>, the federal government was able to enact a federal factory law in 1877 that regulated working conditions in factories and which made Switzerland a leading country in Europe in terms of labour protection. A major reason for this early programme adoption was the purely regulatory nature of this policy field that did not require major public expenditure. In contrast, redistributive programmes were substantially postponed because of the federation's lack of fiscal and social security powers.

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<sup>2</sup> The fact that many cantons had already set up labour legislation actually proved to be highly favourable for federal legislation because these laws served as a template for designing the Federal Factory Law adopted in 1877. This example also clearly demonstrates that federalism occasionally serves as a political laboratory with catalysing effects for national social policy.

Severe struggles between different branches of government and constitutional rigidities associated with the reallocation of fiscal powers protracted or even impeded the reallocation of fiscal responsibilities. Only by adopting a parafiscal approach was the federal government capable of initiating redistributive programmes<sup>3</sup>. As a consequence, Switzerland's welfare state trajectory is marked by a strong asymmetry in terms of the temporal sequence of labour protection legislation and the enactment of social transfer programmes: While Switzerland was pioneer in regulating working conditions in comparative perspective, the country was in the rearguard regarding the enactment of redistributive social programmes. The Australian experience illustrates the same dualistic development. The use of the power to arbitrate industrial disputes made it possible to establish minimum wages and compulsory sick pay by requirements imposed on employers, but standard social programmes were initiated late and were miserly in their expenditure levels (see Castles, 1985).

Similar patterns can be observed in Europe. Regulatory social policy has been the realm in which social policy progress has been made lasting recent decades for several reasons. First of all, no major fiscal resources are required to launch such initiatives. Secondly, decision making in this field is based on QMV and is thus less prone to political deadlock. Interestingly, and with a strong resonance to Australia, where the impetus for regulation were the judgements of the Court of Arbitration, social policy initiatives from the centre are unusually court-driven in character. It is as much a series of rulings from the European Court of Justice as the process of Commission and Council initiatives that has been the source of new social policy. While the Council and Commission are prone to stasis, the ECJ's institutional design fosters activism—a situation emphasised even more in the Draft Constitutional Treaty (CT) signed in Rome in October 2004. The Court relies on simple majority votes, taken in secret, sheltering it from the political immobility typical of the EU. Only a unanimous vote of the Council or a Treaty revision can undo ECJ decisions when they relate to primary European law. Legal strategies have had the advantage of leaving taxing, spending, and administrative powers at the national level—and this is even more the case where the substantive policy content of those strategies is regulatory in character. It is important, however, to emphasise that such a court-led process of social policy development has its own logic. Decisions are likely to reflect demands for doctrinal coherence as much as, or more than, substantive debates as to the desirability of various social policy outcomes. The capacity of reforms built around a judicial logic to achieve substantive goals may be

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<sup>3</sup> This route, however, attracted the fierce opposition of business interest organisations. In contrast to Germany and Austria, Swiss business could launch a referendum to obstruct an increase in non-wage labour costs. Indeed, health insurance and pension insurance schemes were rejected in referenda held in 1900 and 1931 respectively.

limited. Furthermore, courts may have less need to consider political constraints in prescribing solutions. One danger is that court initiatives may exceed the tolerance of important political actors within the system. After all, centralised policy-making was made difficult in the EU for a reason, and ECJ activism may generate resentment. This is, of course, one aspect of the current disquiet over the ‘democratic deficit’.

The most recent bypass strategy adopted, however, is the attempt to increase policy co-ordination between the Member States by means of soft forms of governance. The prime example is the Open Method of Co-ordination (OMC). In its ideal-typical form, the OMC is a new type of governance (Radaelli 2003: 8; Mosher/Trubek 2003: 64) that can be traced back to the difficulty of achieving uniform policies by means of the classic binding instruments of hierarchical governance. Instead, the route taken strongly emphasizes (semi-) voluntary co-ordination of policies across different levels of government. The main idea is to promote the exchange of information, experience and best practice between the Member States and the Commission. More specifically, Art. 140 ECT stipulates that the “Commission shall encourage cooperation between Member States and facilitate the coordination of their action in all social policy fields”. This co-ordination should be achieved by “making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations” (ibid.). It is evident that this bypass route is not legally binding since it is mainly concerned with monitoring, consulting and recommendations and therefore focuses mainly on the diffusion of knowledge. Policy change is thus expected to result from policy learning as well as from mechanisms of blaming and shaming connected to benchmarking.

## **CONCLUSION**

The aim of this paper has been to find out whether there are lessons to be learnt from welfare state development in the established federal states that can help us to understand contemporary patterns as well as future trajectories of EU social policy. In general, multi-level systems that are based on strong separation of policy jurisdictions are prone to stasis and political gridlock. However, compared to the six federal nation states analysed here, the European multi-level system is peculiar in many respects. Its unique system of joint decision-making inhibits social policy change, with contemporary institutional and actor constellations conforming closely to all the axioms of veto player theory. The proliferation of veto points gives Member States powerful levers to defend the status quo. Thus, and in a similar way to the institutional development of the six federations featuring in our analysis, the policy route that has been taken has been based on strategies seeking to bypass the in-built institutional rigidities and limited fiscal and administrative capacities of the EU. Specifically, we have identified two genuine bypass routes that play a key role in contemporary EU social policy making. The first is

strongly regulatory in nature, while the second is principally based on voluntary action but simultaneously embedded in a common framework of monitoring and consultation. As a result, social policy evolution and harmonisation is likely to be more the result of mutual adjustment and incremental accommodation than of central guidance. This means that EU social policy development, if it is to happen on any major scale, is a project for the very long term.

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## **BIOGRAPHICAL NOTES**

**Herbert Obinger** is Assistant Professor of Political Science at the University of Bremen. Currently he is a visiting scholar at the Center for European Studies at Harvard University. Research interests include comparative welfare state research and comparative political economy.

**Stephan Leibfried** is Professor of Political Science at the University of Bremen, where he founded and now co-directs the Center for Social Policy Research (CeS) and the Bremen Graduate School for the Social Sciences (GSSS). He was a founder and is current Director of the TranState national Research Centre. His main research interest is comparative study of states and their transformation through globalisation and supranationalisation, with particular emphasis on the welfare state component.

**Francis G. Castles** is Professor of Social and Public Policy at the University of Edinburgh. His main research interests are in comparative public policy and social policy development in Australia, New Zealand and advanced Western countries more generally.

Address for Correspondence

*Telephon:* +49 421-218-4369

*E-Mail:* hobinger@zes.uni-bremen.de

*Address:* Zentrum für Sozialpolitik, Parkallee 39, 28209 Bremen, Germany