



BEUCITIZEN
BARRIERS TOWARDS EU CITIZENSHIP

The Social Construction of Social Rights across Europe

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EXECUTIVE SUMMARY

The concept and the substance of social rights as rights of citizenship are of contested and relatively recent historical provenance. Prior to the emergence of modern welfare states, social provision across Europe was based largely in localised systems of discretionary poor relief shaped in part by religious influences. The rise of industrial capitalism gave rise to social concerns that found expression in the late nineteenth and early twentieth centuries in a tenuous but essentially social liberal consensus favouring the development of a disparate array of social insurance arrangements for the protection of workers. The subsequent evolution of such arrangements was affected in a variety of ways by the consequences of two world wars and the rise and fall of communism. In the mid-twentieth century, at the time that the foundations of the EU were being laid, social rights emerged as implicit or explicit components of national citizenship in a variety of Western European welfare regimes, but also as aspirational principles established through an international human rights framework. Towards the end of the twentieth century, the combined effects of financial globalisation, the collapse of communism in Eastern and Central Europe and the hegemonic rise of neo-liberal economic and managerial orthodoxies have given rise in the twenty-first century to less certain understandings of social rights. Such evidence as we have indicates there is no unanimity among policy actors as to the meaning of social rights and that the discourse and understanding of social rights is as variable within European countries as it is between them. The development of social policy is not grounded in a shared understanding of social rights. The barrier to the defence and promotion of social citizenship in Europe lays not so much in inconsistencies in the *de facto* realisation of specific rights as in a failure explicitly to engage with and accommodate uncertainties and/or ideological differences as to the aim and purpose of such rights. If there is to be a broadly consensual and effective form of supra-national European social citizenship, this may require serious debate as to the basis for some kind of substantively shared social policy initiative (such as the introduction of a modest European Citizen's income).



1. INTRODUCTION: SOCIAL CITIZENSHIP IN EUROPE

This report is concerned with the past and future development of social rights in Europe and the competing influences that have shaped and currently inform that development. The approach is essentially sociological. It is concerned not *directly* with legal formulations, economic theory or the political foundations of citizenship, but with underlying social discourses and understandings. Social rights are considered as ideological, moral and therefore essentially social constructs.

LEVELS OF CONSTRUCTION

It may be argued that social rights are best understood as ‘articulations of human need’ (Dean 2010; 2015). They are constructed through the process by which human beings socially negotiate the naming and claiming of needs and the legitimacy of the demands that human beings place upon each other. The earliest human societies, as associations of interdependent beings, will have established customary rules for ensuring everyday wellbeing (e.g. Sahlins, 1974). In their struggle for survival and fulfilment human beings have come in various ways to articulate the ethical premises by which to recognise the needs and claims of not only intimates and neighbours, but of distant strangers (Honneth, 1995). In this sense, the construction of social rights preceded the emergence of cities or nation states and the development of formal law and political process. Social rights, as creatures of struggle and custom were and are fundamentally constitutive of our humanity. More recently and conventionally, however, we have constructed social rights at two levels: either as components of welfare state citizenship (Marshall, 1950) or as specialised elements of the international human rights framework (e.g. Donnelly, 2003; Freeman, 2002).

At the citizenship level, social rights are widely regarded as a ‘Western’ twentieth century invention, ushered in by advanced industrial capitalism and the creation of the modern welfare state. The ancient origins of citizenship as the exclusive status of a patrician male elite gave way, following the so called European Enlightenment, to new modes of governance commensurate with the development of capitalism (Turner, 1986), and eventually to mechanisms by which, in highly complex affluent societies, it was potentially possible for the needs of all citizens to be met through mechanisms of collective distribution (Titmuss, 1970). Citizenship could be understood not only as a status, but as a practice: a practice with uneven and frequently suboptimal outcomes, not least because citizenship status evolved in ways that continued to marginalise, if not exclude, on the basis of class, gender, ethnicity and disability. (Lister, 2003). But social rights had been evolving long before they were identified and named as social rights and the social rights to which modern European welfare states supposedly gave birth had been preceded for centuries by a variety of customary, charitable and administrative practices, the nature of which inevitably influenced modern forms of social citizenship and shaped the emergence of social rights as creatures of policy and law: specifically rights to work, social security, health and social care, education and housing.

At the human rights level, a new generation of ‘economic, social and cultural rights’ (an expression for which the term ‘social rights’ is widely regarded as a synonymous contraction) was formally announced by the UN’s Universal Declaration of Human Rights of 1948 (the UDHR). The declaration gave expression in the wake of two world wars to a loose international consensus (Davy, 2013), driven in particular by a social liberal ideal summed up in a demand - variously espoused, for example, by Roosevelt (1941) and Beveridge (1942) - for individual freedom from ‘Want’. The UN eventually in 1966 established separate International Covenants to give effect to the Universal Declaration: one for Civil and Political Rights, the other for Economic, Social and Cultural Rights. The latter allowed for the ‘progressive realisation’ of social rights as creatures of principle and doctrine, requiring state parties in the first instance to *respect* such rights; second to *protect* such rights; and third, so far as resources permitted, to *fulfil* such rights (for discussion, see Shue, 1980). In the meantime the Council of Europe had in 1950 established the European Convention on Human Rights (the ECHR, primarily a



civil and political rights treaty) and in 1961 the European Social Charter (the ESC, a social rights treaty). The ESC was revised in 1996.

At the level of the European Union (EU) as a supra-national body, the pertinence of social rights has been somewhat ambiguous. The EU began life in 1957 as an economic union (the European Economic Community), concerned fundamentally with market promotion rather than social protection (e.g. Scharpf 2002; Hantrais, 2007). It has since been evolving as an incipient political union as much as an economic union and in recent decades has sought to extend cooperation between member states into *l'espace social* (Delors, 1986), explicitly laying claim to a 'social dimension' (CEC, 1993). The EU promulgated a Charter of Fundamental Social Rights in 1989. Extended versions of this were incorporated as Social Protocols to the 1992 Maastricht Treaty (in which some reference to 'European Citizenship' first appeared), the 1997 Amsterdam Treaty, and finally into the Lisbon Treaty of 2009, which additionally included a 'horizontal social clause' that requires the EU when defining and implementing its policies and activities, to 'take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.' (Clause 9). Pessimists had previously contended that the EU social policy was no more than 'an empty shell' (Faulkner, 2000). Optimists suggest that the Lisbon Treaty potentially signified a mainstreaming of social policy issues (e.g. Vielle, 2010). The EU Charter of Fundamental Social Rights incorporates elements of the ESC, but the rights it enshrines are arguably more symbolic than real. Over the years EU directives have clearly had practical consequences for social protection policies across Europe, but EU influence over the rights of European citizens could, as Barbier puts it, 'be *indirectly* observed, because of the growing power of EU *economic law* (the freedom of movement)' (2013: 100). The impact of the EU on the status and recognition of social rights is uncertain. The concept of 'Social Europe' has been at best under-realised and according, for example, to Bailey (2008) will continue to face obstacles at the level of social, political and institutional relations.

CITIZENSHIP MODELS AND WELFARE REGIMES

Amongst these obstacles are the divergences evident between member states and the path dependencies evident within them. This report will explore the extent of such obstacles, having particular regard to differing social constructions of social rights. Welfare regime theory (Esping-Andersen, 1990; and see Ferragina & Seeleib-Kaiser, 2011) provides a framework with which to model the different ways in which social rights may be socially constructed. Elements of such an approach have been applied elsewhere to reflect on the implications of, on the one hand, competing interpretations of citizenship and, on the other, different approaches to equality and social order (Dean, 2012: 20-24). A version of the heuristic taxonomy to which this gives rise is presented visually in Figure 1 below and elaborated in the ensuing explanation. The taxonomy revolves around the contradictory European Enlightenment demands immortalised in the French Revolutionary slogan: *liberté, égalité, fraternité*, or freedom, equality, solidarity. On the one hand, the demands for freedom and solidarity are not necessarily commensurable. On the other, the demand for equality is capable of competing interpretations and potentially conflicts with the requirements of social order. As a result one may conceptualise four models of social citizenship, each of which is consistent with a different kind of welfare regime and, potentially, a different idea of social rights.

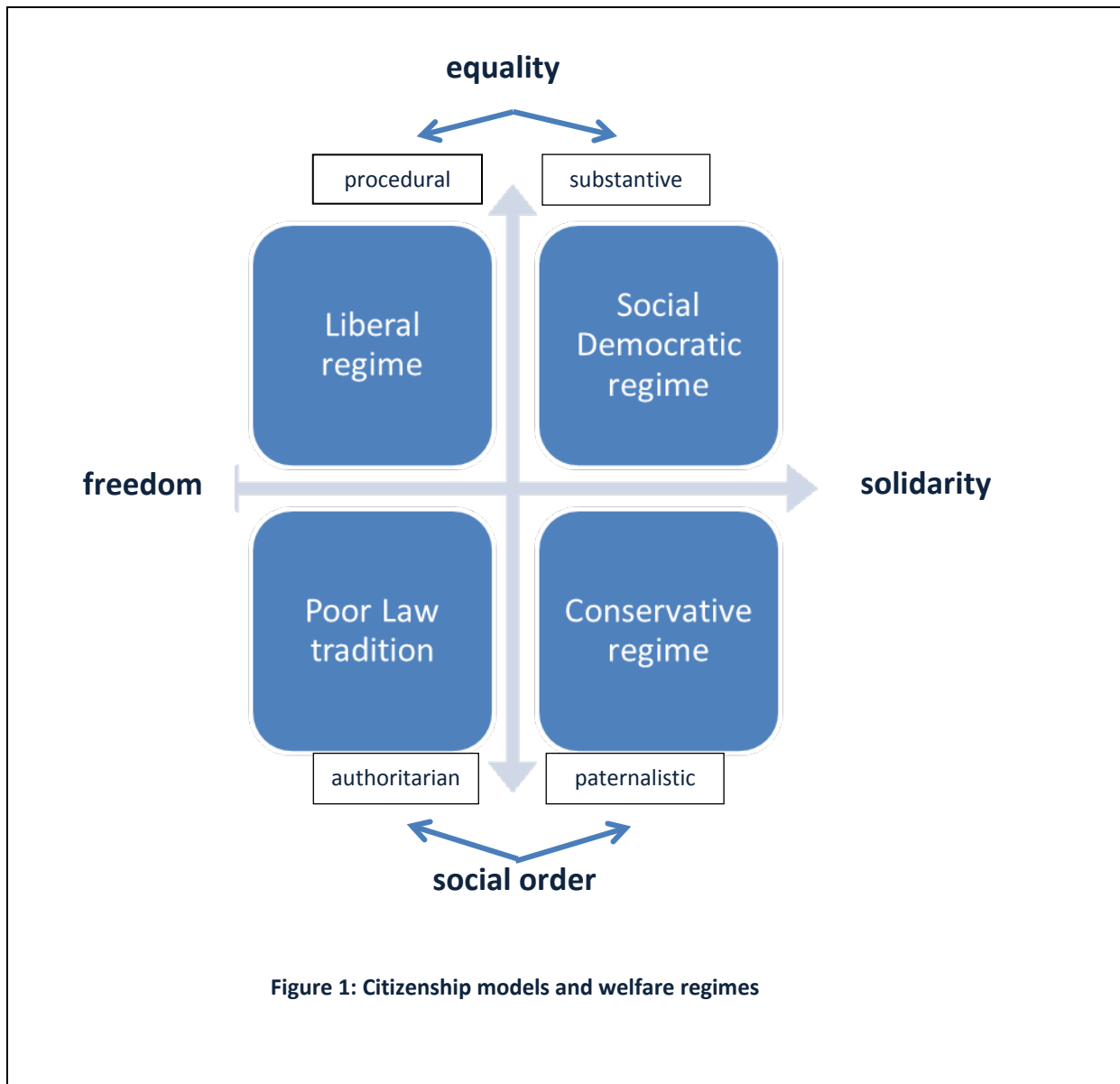


Figure 1: Citizenship models and welfare regimes

- Freedom with *procedural* equality fits with Esping-Andersen's classic definition of a liberal welfare regime. The immanent function of social rights is to facilitate opportunity and the effective but principled functioning of capitalism. Such rights articulate the individual needs of utility maximising market actors.
- Solidarity with *substantive* equality fits with Esping-Andersen's classic definition of a social democratic welfare regime. The immanent function of social rights is to accommodate capitalism to principles of social justice. Such rights articulate the shared needs of socially engaged citizens.
- Freedom within an *authoritarian* social order fits not with any of Esping-Andersen's classically defined welfare regimes, but with the traditions of the Poor Law regimes that preceded but continue to influence modern welfare regimes. Insofar as such traditions give expression to social rights, they are conditional and function practically to underwrite the survival of the fittest in a competitive social and economic environment. Such rights articulate the basic needs of morally deserving individual survivors.



- Solidarity within a *paternalistic* social order fits with Esping-Andersen's classic definition of a socially conservative, Christian democratic or corporatist welfare regime. The immanent function of social rights is to accommodate capitalism to established social practices, conventions and structures. Such rights articulate the shared needs of socially incorporated subjects.

It must be emphasised that actually existing welfare regimes are inevitably hybrid and usually complex in character; and that the labels that we may for convenience attach to evolving ideologies can as easily obscure as illuminate what they may once have defined. What is more, recent trends in welfare governance, increased pluralism in social provision and the consequences of new public managerialism provide a changing backdrop (e.g. Newman, 2005). The typology outlined above is no more than a conceptual framework or tool that will be applied later in the course of this report when considering evidence in relation to historical evolution and current discourses.

THE TASK AND ITS PARAMETERS

The study or task on which this paper reports incorporated participants from eight European countries: Denmark, Estonia, Germany, Netherlands, Poland, Spain, Sweden and the UK. The task was conducted in two parts. The first entailed the production of country accounts examining the history and current development of social rights in each country. The second entailed key-informant interviews with a small selection of policy actors from each country. Each component of the task will be reported upon separately in the pages that follow.

The empirical focus of the task was restricted in two ways. First, though the creation of social rights is embedded in legal and political processes (which are the concern of other Tasks within the Work Package of which this limited study was a part) we were attempting to capture something about the ideas and constitutive discourses through which social rights find expression across Europe. It was not feasible given the limited resources and skill-sets available to the partners who participated in this research to have generated a consistently detailed account of the faltering development of social citizenship in eight separate countries, or a wholly exhaustive picture of the complex array of social meanings currently attaching to social rights in Europe. The study should be considered as a pilot project or scoping exercise.

Secondly, there was a selective focus on just four categories of social right: the right to social assistance, to housing, to healthcare and to education. It is necessary to preface the accounts and the analysis that follows with a brief discussion of the how these categories are to be defined and the ways in which they may intersect and relate to one another:

- **Social Assistance.** The term is used to refer to forms of means-tested safety-net provision. Social assistance has its origins in the era of the Poor Laws when it would have been available not as a right but on a discretionary basis. Modern welfare regimes have generally legislated to provide rights to some form of social assistance, but subject to varying degrees of conditionality and, in some instances, administrative discretion. Such provision may be connected to the provision of assistance in kind and to other forms of social support for low-income or vulnerable households. Generally, however, social assistance takes the form of tax financed cash benefits that are wholly distinct from contributory social insurance benefits.
- **Housing.** Social rights to housing may be realised in three quite different ways: first, through social assistance in the form of means-tested allowances or housing benefit for low-income households or the provision in kind of temporary shelter for vulnerable homeless households; second, through state regulation of private provision, including rent controls, laws on security of tenure or controls over



housing conditions; third, through the provision of dwellings, by way of subsidies to housing providers and/or direct public sector provision.

- Healthcare. Social rights to healthcare may be realised through the provision of a de-commodified public service or through public subsidy and regulation of private or charitable sector providers. Rights can be based on social assistance principles (for uninsured or destitute persons), social insurance principles, or universal principles (where treatment is tax financed and provided free of charge).
- Education. Social rights to education may be realised through the provision of a de-commodified public service or through public subsidy and regulation of private or charitable sector providers. Insofar as education is compulsory in all established welfare regimes, the rights of parents and children to choose the form and content of provision may be contested. In the European context, it is significant that the Council of Europe incorporated a provision that ‘no person shall be denied the right to education’, in the ECHR (First Protocol, Article 2), rather than in the ESC: the right is framed in terms of freedom of access, rather than as a substantive social right.

These are the broad parameters within which the study was undertaken, but it is important to emphasise that ‘social rights’ is a protean term that defies precise definition and the primary object of the task was to explore similarities and differences in the ways that social rights are formulated and understood and the extent to which it is possible in a pan-European context for the term to have a degree of common and coherent meaning for the citizens of Europe.



2. HISTORICAL CONTEXT: SOCIAL RIGHTS AS SOCIAL CONSTRUCTS

Individual country accounts, some of which are in the public domain, were prepared as follows:

- for Sweden, by Otto Swedrup, University of Gothenburg
- for Denmark, by Silvia Adamo, University of Copenhagen
- for the Netherlands, by Susanne Heeger and Frans Pennings, University of Utrecht
- for Germany, by Florian Blank, Institute of Economic and Social Research (WSI)
- for the UK, by Hartley Dean, London School of Economics and Political Science
- for Spain, by Sergio González Begega, University of Oviedo
- for Poland, by Andrzej Marian Świątkowski and Marcin Wujczyk, Jagiellonian University
- for Estonia, Gaabriel Tavits, University of Tartu

Partners to the exercise were asked to prepare:

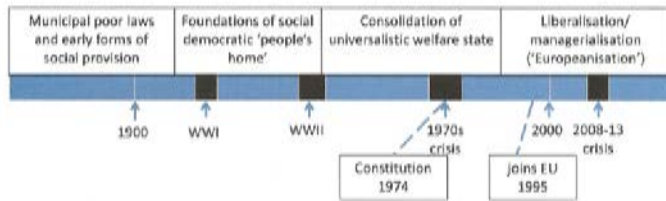
- A succinct narrative account of the overall development of social rights in their own country. The account should attempt so far as possible to identify any distinctive phases of development and the *logic* informing each such phase.
- A succinct discussion of current social policy trends in their own country, focusing on the latest overall trajectories of change that bear upon the *scope* and *definition* of citizens' social rights.
- A set of specific illustrative discussions relating to each of the four policy areas which we had been tasked to investigate; namely, social assistance, housing, health provision and education.

The authors of the resulting accounts, as scholars from a variety of disciplinary backgrounds, struggled valiantly to comply, generating a fascinating collection of materials. In doing so, they themselves demonstrated the fundamental difficulty of grasping the contestable nature of social rights as a social construct and, for example, the elusive boundaries between social and legal constructions and between rights and policies. Certain gaps inevitably remain. As an experiment, however, it was more than worthwhile. The task of synthesising an overview from such diversely framed contributions has been challenging. To do so, we have necessarily been selective in some instances; we have brought interpretations of our own to bear; and we have drawn on occasions on supplementary sources.

Of the countries included in the exercise:

- Two, Sweden and Denmark, are classically regarded as Nordic or Social Democratic welfare regimes with, according to Ferragina and Seeleib-Kaiser (2011), high de-commodification scores (39.1 and 38.1 respectively).
- Two, the Netherlands and Germany, though different in important respects, are Western continental European countries and each were founder members of the European Economic Community in 1957. The Netherlands, has been characterised as a 'corporatist' or

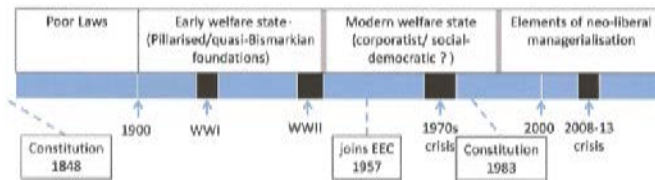
Sweden



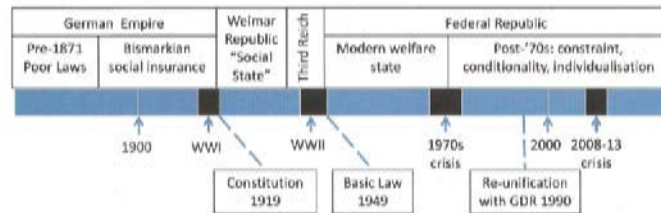
Denmark



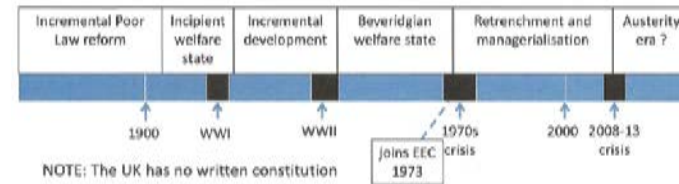
Netherlands



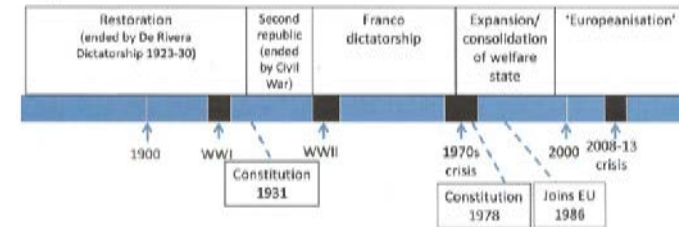
Germany



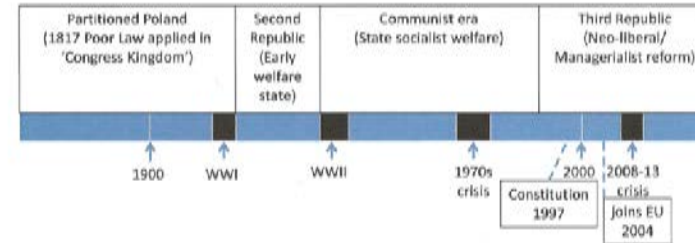
UK



Spain



Poland



Estonia

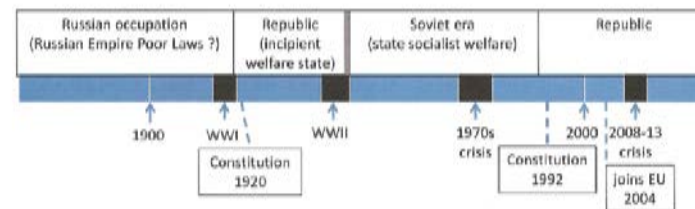


Figure 2: welfare state development time-lines

conservative/social democratic hybrid welfare regime, with a medium-high de-commodification score (32.4). Germany is classically regarded as a conservative welfare regime, with a medium de-commodification score (27.7).

- The UK is classically regarded as a liberal welfare regime, with a low de-commodification score (23.4).
- Spain is regarded as a distinctively 'Southern' or 'Mediterranean' welfare regime (e.g. Ferrera (2006); Bonoli, 1997), though its foundations were strongly conservative/corporatist.
- Two, Poland and Estonia, are both post-communist welfare regimes, albeit that the former is inclined to conservative traditions and the latter to a liberal approach (Cerami & Vanhuysse, 2009).¹

Welfare regime theory, while capturing patterns relating to factors such as de-commodification and the extent of substantive social protection and provision, does not directly address itself to social rights. Labour power and/or essential human services can be more or less highly commodified, but the significance in terms of 'rights' to protection and/or to access services will vary depending on just how the citizen or subject is conceptualised or constituted. Unpicking every dimension and nuance from conventionally descriptive historical accounts is a difficult task. For the purposes of the exercise, we focus on a time-frame from the later parts of the nineteenth century to the early part of the twenty-first century. This is the period in which modern welfare states developed. It was a period punctuated by two world wars; by the rise and fall of communism; and by global financial crises. We have attempted to interpret the narrative accounts provided in relation to historical phases, social policy developments and constitutional milestones. Visual summary representations of the time-line for each country are provided in Figure 2 above, and brief summaries of the individual country accounts are provided below.

NORDIC COUNTRIES: SWEDEN AND DENMARK

Sweden and Denmark share certain historical characteristics. On the one hand, both were Protestant countries (specifically Lutheran), while on the other, the modernisation of agriculture in each proceeded relatively gradually and in a manner that fostered relative equality and solidarity between social classes: a combination of factors that lent itself to a particular understanding of the relationship between individuality and collective state organisation. Kananen (2014) suggests that the evolution of the Nordic welfare states is best characterised in relation to three eras: prior to World War II, a '*Modernisation*' era of emancipatory social development, in which the early development of education characteristically played a key part; between WWII and the 1970s, a '*Welfare State*' era, in which strongly collectivist structures were consolidated and extensive rights to social security and social services were developed; and since the 1970s a '*Renegotiation*' era in which collectivist structures have been reformulated in an attempt to accommodate to new global economic orthodoxies. This broadly fits the accounts with which we have been provided (Swedrup, 2015; Adamo, 2015).

By the nineteenth century, parish-based Poor Law provision in both countries still bore the stamp of traditional Lutheran austerity, though they began to be brought under closer administrative control. In Denmark this was facilitated by liberal principles established in the 1849 Constitution (by which Denmark became a constitutional rather than an absolute monarchy). In Sweden it occurred a little later in the century with the establishment of municipalities and County Councils (the latter, for example, assuming incipient responsibility for public health provision). The nineteenth century had also witnessed the beginning of state intervention in basic education with the establishment of Folk Schools, (from 1814 in Denmark and 1842 in Sweden). Towards the end of the nineteenth century and during the beginning of the twentieth, Sweden witnessed an expansion of state responsibility for housing and working conditions, and for sickness benefits; Denmark, witnessed the development of old age pensions, mandatory health and accident insurance, followed by voluntary

¹ Directly comparable commodification scores for Spain, Poland and Estonia not available.



unemployment and disability insurance, underpinned by tax-financed public assistance. By the 1930s, Sweden was developing increasingly inclusive or universalistic system of social insurance. The Social Democratic Prime Minister, Per Albin Hansson, famously declared that the aspiration of the Swedish state was to become ‘the people’s home’. Denmark similarly experienced what Adamo characterises as its ‘breakthrough years’ creating an extensive national insurance system whose aim was to underwrite ‘the good society based on ideas of citizenship – not nationality ... but community’ (2015: 10).

In the post WWII era both countries strengthened and consolidated their social policies, establishing a model that closely conformed to Marshall’s ideal of a ‘democratic-welfare-capitalist’ society (1981). Sweden introduced child benefit, institutionalised housing and employment programmes and earnings-related social security; it expanded public services and reorganised education. Denmark embarked on what Adamo describes as the ‘Glory Times of the welfare state’ (2015: 11), with the institution of a universal health service, a range of family policies and the reform of social assistance. The Danish Constitution of 1953 provided not necessarily rights, but *guarantees* to its citizens of work, social assistance and education.

Sweden and Denmark were by no means immune to the world-wide crisis of the capitalist welfare state that occurred in the 1970s (Mishra, 1984), which precipitated change in both countries. In Sweden, however, the effects were not manifest until the 1980s and despite the crisis, the Swedish Constitution (or ‘Instrument of Government’) of 1974 - which replaced a long-since obsolete document of 1809 - made explicit provision for social rights, in the following terms:

Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person. The personal, economic and cultural welfare of the private person shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public institutions to secure the right to health, employment, housing and education, and to promote social care and social security.
[Article 2]

The drafting owes something to the UDHR (and/or the ECHR and ESC), but it may be noted that whereas the aim is to *secure* the right to health, employment, housing and education, the Article seeks only to *promote* social care and social security. The Article was amended in 2009 to read as follows:

Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the individual. The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, the public institutions shall secure the right to employment, housing and education, and shall promote social care and social security, as well as favourable conditions for good health.

The changes are ostensibly subtle, but arguably significant. The ‘private person’ has been recast as ‘the individual’, which suggests that Sweden may have resiled from the idea of a ‘people’ whose members have both a private and a shared public persona, in favour of a more conventionally liberal conception of the individual and the state. And the right to health has been replaced by a commitment to promote ‘favourable conditions for good health’, which suggests some preference for the idea that personal health and healthcare provision are not necessarily a direct state responsibility. Might these amendments be emblematic of a shift in thinking about social rights in the period between 1974 and 2009? In Sweden there have been observable trends towards liberalisation or marketisation; processes which from a Nordic perspective are seen as coterminous with ‘Europeanisation’ (Swedrup, 2015) and which have included the adoption of supply-side oriented approaches to labour market activation and increased participation of both private providers and civil society actors. The Swedish welfare state has been relatively resilient despite liberal reforms and greater fiscal austerity, but for example: though Sweden has an extensive public housing sector resulting from past development, current housing policy is confined to the provision of housing benefits; though there is an



extensive tax-funded health service, modest co-payments are required of patients and there is increasing private sector involvement; though there is an extensive tax-funded education system, independent 'free' schools have been introduced.

Denmark, between the 1970s and the 1990s experienced growing political scepticism regarding the affordability and efficiency of its welfare state and a movement towards what might be defined as 'market socialism' including the introduction of the principles of New Public Managerialism, and of elements of conditionality, particularly in the field of labour market activation or 'flexicurity' policy. Adamo (2015) suggests that since the turn of the twenty-first century a 'liberal wind' has been especially evident, with the increased intrusion of private actors into public affairs; a growing tendency for the citizen to be recast as 'customer' or consumer of public services; and an emphasis not so much on social service provision, as upon a selective of social investment approach. But as in Sweden, the welfare state is an enduring feature of the Danish polity and remains strong.

FOUNDER EEC MEMBER COUNTRIES: NETHERLANDS AND GERMANY

As nation states The Netherlands and Germany emerged from a complex and fluid patchwork of states, territories and peoples in Western Europe and accordingly share not only geographical proximity but a long and tortuous history. Both might now be regarded as exemplars of the Rhineland model of consensual capitalism. Most significant for the purposes of understanding the construction of social rights and approaches to social citizenship is that both countries have had to accommodate both Catholic and Protestant religious traditions, as well as entrenched class-based ideological divisions and influences.

The Netherlands became a constitutional monarchy by virtue of its constitution of 1848, which provided the basis upon which subsequent reforms to the Poor Laws ensued. The reforms replaced indiscriminate discretionary provision by religious and private charity with parsimonious state provision governed by the principles of subsidiarity and inevitability, so preserving a role for charity and restricting the role of state to minimalist social assistance. The constitution also (since 1917) permitted parents freedom to choose between state and denominational education for their children. The German Empire was established through the federation of 27 states (both Protestant and Catholic) by a constitution in 1871. The constitution, for the time being, left intact the various Poor Law arrangements and incipient schooling arrangements of the constituent states.

Both countries would go on to develop social insurance arrangements. In the case of the Netherlands this was a gradual process that did not begin until just after the turn of the twentieth century, when the government finally followed the example set by Germany under Bismarck (see below) by instituting compulsory industrial accident insurance, though it took a further 30 years by stages to introduce insurance for sickness, invalidity and old age (Heeger & Pennings, 2015). In the meantime, provision for discretionary poor relief was maintained and developed through the municipalities, which also had responsibility for the funding and supervision of social housing. The delay in copying Bismarckian-style social insurance was occasioned in part because of deep disagreements over the 'social question' between conservatives, (including farmers and self-employed artisans), liberals and industrial workers, and partly because of 'pillarisation': the principle at that time that social organisations, including schools and social insurance schemes, should be instituted within three co-existing sovereign spheres or 'pillars': the Protestant (primarily Calvinist); the Catholic; and the secular, though the secular pillar eventually separated into liberal (pro-business) socialist (working class) pillars. The resulting complexity and the compromises required limited the pace of progress until after WWII.

The German story was different. The German Chancellor, Otto von Bismarck, drove through the introduction of the first social insurance schemes in the 1880s, responding to what he regarded not as the 'social question', but the 'worker question' (Blank, 2015). Bismarck sought to forestall the revolutionary potential of an emerging socialist/labour movement through the introduction of mandatory and strategically segmented



social insurance schemes. It has been argued that Bismarckian social insurance had its roots primarily in a Protestant-based social conservatism (Kaufmann 1988): Bismarck, a staunch Protestant, was able to speak to the priorities of the Catholic social movement, which sought to abate the disharmony between labour and capital: therein lay the pragmatic foundations of Christian Democracy, which would eventually shape modern Germany's welfare state. However, the First World War intervened, at the end of which, the Weimar Constitution explicitly laid the foundations of a liberal democratic social state (*Sozialstaat*). The constitution proposed comprehensive health insurance, education to age 18, opportunity for all to work, provision for necessary maintenance for those who could not. (It even included a distinctly Social Democratic provision that the government should endeavour to secure international regulation of the legal status of workers to the end that the entire working class of the world may enjoy a universal minimum of social rights [Article 162]). In the 1930s, despite adverse economic conditions, the three established branches of social insurance (health, work accident, old age & invalidity) were strengthened, a fourth (unemployment) was added and, for example, provision was made for housing and rent controls. Under the Third Reich, however, the constitution was subject to revision and reinterpretation. Though social provision did not cease, it was premised not on rights, but the tyranny of National Socialism and scientific racism, an ideology and a cause that precipitated WWII.

The end of that war portended the development of modern welfare states, underpinned by Keynesian economic principles, in both The Netherlands and West Germany. For the Netherlands this entailed the restoration of government and a period of incremental but substantial growth in social provision. The Netherlands had been subject to Nazi occupation during WWII and its government exiled to London. The reforms instituted after the war, while they were implemented in the context of The Netherlands' corporatist traditions, were in part inspired by the example of the 1944 Beveridge Report in the UK. But, for example, the mandatory health insurance scheme imposed on the population during the German occupation was adopted and adapted. A new national benefits administration was created, replacing the fragmented assortment of pre-war workers' unemployment, sickness and disability insurance schemes, while new universal (or residence-based) schemes for old age pensions, healthcare and housing benefits were introduced and significant reforms to social assistance were made. By the 1970s social public expenditure levels in The Netherlands were on a par with those in Sweden. Goodin *et al.* (1999) would argue that despite its corporatist style of governance, The Netherlands might be regarded as a Social Democratic rather than a Conservative/corporatist welfare regime.

For the new Federal Republic of Germany the post WWII period entailed rebuilding and restructuring. In the first instance, this meant reclaiming structures established under the Weimar Republic. But the new constitution, or Basic Law, of 1949 laid down principles to be realised through specific legislation and codes, including a Social Code that cautiously provides for social rights (*Soziale Rechte*) in pursuance of the state's protective obligations (Blank, 2015: 3). In the years that followed, provision was made for pension reform; for adjustment and consolidation of social insurance schemes, with an explicit emphasis on maintenance of living standards; extended health insurance; a clear right to social assistance; subsidies for house building and provision for housing benefits; and the development of vocational education.

When The Netherlands and Germany joined the EEC in 1957 they could be regarded as having set themselves on broadly similar trajectories in terms of both economic and social policy and when later, in the 1970s, they were beset by pressures from the global financial crisis, economic globalisation and demographic transition, their responses were broadly but not entirely similar. The Netherlands initially struggled to sustain the costs of social security provision, but combatted what had been characterised as the 'Dutch Disease' by negotiating some restructuring of state welfare and some adaptations to labour market practices. The so called 'Dutch Miracle' that followed resulted primarily from a one-off surge in labour market participation. Insofar as these steps entailed some curtailment of social rights, they coincided - paradoxically perhaps - with the adoption in 1983 of a revised constitution, which makes express provision for social rights, including rights relating to employment, education and health, though these are framed largely in the generalised language of the UDHR



and/or the ECHR/ESC. From the 1990s onwards, however, there has been a significant trend to neo-liberal managerialisation in Dutch social policy with the adoption of rigorous ‘work first’ labour market activation policies; increased conditionality and the promotion of a ‘rights and responsibilities’ discourse; and the introduction of mandatory *private* insurance for basic healthcare.

Germany too responded initially with some cuts to social provision, though its problems were compounded by the consequences of the re-unification in 1990 of West Germany (The Federal Republic) and East Germany (The German Democratic Republic, that had since WWII been part of the ‘Eastern Bloc’ within the sphere of influence of the Soviet Union). The strength of the German economy allowed the welfare state to remain relatively resilient, and even to introduce a fifth branch of social insurance (to cover social care costs), but there has nevertheless been an ineluctable trend to liberalisation: re-commodification through supply-side labour policies (the Hartz reforms of 2002-3); introduction of co-payments and privatisation within healthcare; privatisation and de-regulation of housing. The emphasis has been on a ‘social investment’ approach, means-testing and on individual ‘choice’ in relation to the use of public services (Blank, 2015).

The Rhineland model of consensual capitalism may endure, but it has imported certain neo-liberal orthodoxies.

THE UK: AN ANGLOPHONE COUNTRY

The UK is generally held up as an example of a liberal welfare regime, but as with all such classifications, this is an oversimplification. First, most commentators agree that immediately after WWII the UK might have been regarded as an emerging Social Democratic welfare regime. Second, the UK is increasingly less than a United Kingdom, since the devolution of policy making powers from Westminster to Scotland and, to a lesser extent, Wales and Northern Ireland, makes the discussion of social rights in the UK potentially complicated. Inevitably, therefore, the thumb-nail sketch that follows is a highly reductive account and one that may in practice be disproportionately (and unfairly) focused on England. Nevertheless what characterises the UK is that it has historically been a predominantly Protestant country; it has been a major imperial power and remains very much part of an Anglophone world with horizons beyond Europe; it was the first country to industrialise and did so at a pace and in a context that fuelled significant class-based divisions, albeit without formal brokerage through permanent corporatist institutions; it has no written constitution.

The English Poor Laws had a history dating back to the sixteenth century and beyond, but their administration was subject to systemic reform in 1834, whereby the relief of poverty was based on institutional deterrence and the Victorian workhouse. In the course of the nineteenth century the Poor Law was by stages relaxed so as to permit - often in concert with organised charity - minimal ‘out relief’ to those deemed deserving and some measure of care for the sick and frail (de Schweinitz, 1961). Elementary state education was introduced in 1870. The turn of the twentieth century witnessed the emergence of a new social liberalism and in the years before WWI the foundations of a welfare state were laid through the introduction of a non-contributory old age pension, followed by limited unemployment and health insurance schemes. There were also developments in state education and public health, though the focus was on the pursuit of National Efficiency rather than any notion of social rights. The inter-war years saw regulation of private rented housing and significant investment in social housing; piecemeal extensions to social insurance, but the retention of means-tested unemployment assistance and poor relief.

During WWII, Sir William Beveridge (a Keynesian economist and a senior Liberal) was commissioned to produce a report (1942) which outlined the basis on which a post-war welfare state would be built. The Beveridge Plan envisioned a comprehensive national insurance system, but with universal family allowances and a national assistance safety net. The Plan was premised on the assumption that, in addition to such measures, the country would develop a tax-funded National Health Service, maintain a universal education system and adopt a vigorous programme of social housing provision. The Plan was interpreted and



implemented by a Labour (at that time essentially Social Democratic) government after 1945 and was rolled out, developed and adapted under different governments during the 1950s and '60s. By the '70s the welfare state was under pressure - as much because of systemic failings as because of external pressures (e.g. Fraser, 2003). It was becoming increasingly reliant on means-tested social assistance provision as social insurance and universal benefits were failing to prevent poverty. Further reforms became necessary in order to provide for social groups whose needs had not been fully foreseen in the Beveridge Plan: disabled people, low-paid workers, lone parent households, homeless families. It was during this period that the UK joined the EU, on the assumption that, by helping to strengthen its national economy, the country would be better placed to meet the challenges it faced.

The election in 1979 of a 'New Right'/monetarist Conservative government portended a period of major reform: public spending restraint; extensive privatisation of social housing and deregulation of private rented housing; increased levels of conditionality in social assistance provision; vigorous promotion of private pensions; the initial introduction of new managerial and market mechanisms into healthcare and education (Glennister & Hills, 1998). Such trends were continued following the election in 1997 of a 'Third Way' Labour government, which while attempting to moderate inequality, placed ever greater focus on supply-side labour market and welfare-to-work policies and on the promotion of competition in the provision of public services (Hills et al., 2009).

Following the onset in 2008 of the global financial crisis, the election in 2010 of a Conservative/Liberal coalition government heralded significant public spending cuts and an era of unprecedented fiscal austerity (that continues unabated under a neo-liberally inspired Conservative majority government following the 2015 General Election). Changes since 2010 have entailed an attempted rationalisation of means-tested support/social assistance with the imposition of overall benefit caps and draconian labour market activation/workfare policies; and the opening of healthcare and education to further competition and private sector involvement. The present government has committed itself to re-negotiating the terms of the UK's membership of the EU and thereafter holding a referendum as to whether membership should continue; and additionally withdrawing from the ECHR, while introducing a 'British Bill of Rights' (which, almost certainly, would not incorporate social rights).

SPAIN: A SOUTHERN EUROPEAN COUNTRY

Spain is an example of a Mediterranean or 'Latin Rim' European nation. It had in past times been a major imperial power, but it was slower than the Northern European countries to industrialise. It is a country with a turbulent history that has been dominated by a powerful conservative Catholic tradition.

Until the late nineteenth century the Catholic Church enjoyed a virtual monopoly over social policy; specifically, education and the governance of poor relief. However, in the period after the Spanish monarchy had been restored (following the short-lived First Spanish Republic of 1873-1874), the debate of the 'social question' that was occurring elsewhere in Europe did receive attention. And, just as the principles of social insurance had attracted some degree of consensus between opposing social interests elsewhere in Europe so, it would seem, it was possible for emerging Social Catholic doctrines, expressed in the *Rerum Novarum* Papal encyclical of 1891, to accommodate the demands of the Krausist movement espoused during the 1880s by Spanish liberal intellectuals (González Begega, 2014). The result was the gradual unfolding of social insurance schemes relevant initially only to relatively small numbers of industrial workers. Over a 20 year period, however, industrial accident insurance, a voluntary health insurance and a compulsory old age insurance were achieved, the development of which continued under the benign dictatorship of General Primo de Rivera.

The Second Spanish Republic established in 1931 promulgated a constitution that boldly proposed a right to minimum welfare, a unified system of social insurance and a universal right to education, free of Catholic influence. A Republican/Socialist government developed plans for a national system of social insurance and set



about the development of a state education system. These initiatives were respectively blocked and reversed by a conservative coalition government between 1933 and 1935. A leftist Popular Front elected in 1936 sought to recover the initiatives but implementation was overtaken by the Civil War through which General Franco would establish a Fascist dictatorship that would endure from 1939 until 1975. During the initial years of the Franco regime social policy arrangements were prescribed according to 'fundamental laws' laid down in a Labour Charter and resulted in segmented compulsory social insurance programmes, including health insurance, modelled to an extent on those of the German Nazi regime, but which covered only a small proportion of the population. The Regime also introduced a form of family subsidy or allowance for workers. Education was regarded as an instrument to strengthen national Catholicism and modest educational reforms sustained this principle. In the 1960s and early '70s, as the Spanish economy strengthened, social protection policies were extended: a unified National Social Security System was created; unemployment insurance for workers and a non-contributory pension for people over the age of 70 were introduced; housing policies were expanded; education was restructured and made free and compulsory, while permitting state subsidies to Catholic and other non-state schools.

The death of Franco in 1975 opened the door to a democratic era, including in 1978, a new constitution which incorporated an express guarantee of 'adequate social assistance' and rights to 'adequate housing', 'health protection' and 'education'. The period that followed witnessed trends to social democracy, decentralised provision, but with a fluctuating role for tripartite/corporatist social dialogue. Universal healthcare and education systems were developed in the 1980s. Social insurance based social security systems were consolidated and supplemented with certain non-contributory benefits. In 1986 Spain acceded to the EEC/EU, the impact of which was manifested in social policy trends from the 1990s onwards, a period that witnessed pressure for restraint in social spending; the 'rationalisation' of public services and a quest for greater efficiency; elements of privatisation in health provision; and adaptations to accommodate labour market flexibility and the introduction of labour market activation policies. These trends towards neo-liberal and managerial principles are associated by some commentators with the consequences of European accession (González Begega, 2014). A period of socialist coalition government from 2005-2011 led to some attempts to 'recalibrate' the Spanish welfare state and this did result, for example, in the introduction of a system for long-term social care provision. Nevertheless, since the onset of the global financial crisis in 2008, Spain has been subject to economic crisis, close fiscal policy supervision and a financial sector bailout by the EU, and associated retrenchment/austerity policies that constrain the realisation of social rights.

POST-COMMUNIST COUNTRIES: POLAND AND ESTONIA

Poland and Estonia have a shared legacy as EU members that had previously been under Soviet bloc communist control. But they have deeper historical links, since a portion of Estonia was once part of the Polish-Lithuanian Commonwealth, before it was partitioned between Prussia, Austria and Russia in 1795. The small Congress Kingdom of Poland, which briefly enjoyed a semi-autonomous status within what was then the Russian Empire, had enacted its own Poor Law in 1817, while further legislation in 1842 provided for social assistance through municipalities with support from charity. (Świątkowski & Wujczyk, 2014). There is evidence, relating to poor relief systems then pertaining in Estonia, to be found in a report relating to the Russian Empire submitted by The Hon. J.D. Bligh and published in Appendix F to the Report to the British Parliament by HM Commission on the Poor Laws in 1834, that:

In Courland, Esthonia and Livonia, the parish (or community) are bound to provide for the destitute to the utmost of their means, which means are to be derived from the common funds; from bequests, or from any charitable or poor fund which may exist; and in Esthonia, from the reserve magazines of corn, which, more regularly than in Russia, are kept full by contributions from every peasant. Those who will not work voluntarily, may be delivered over to any individual, and compelled to work for their own



support, at the discretion of the elder and his assistants. Those poor who are found absent from home, are placed in the hands of the police, and transferred to their own parishes.

This suggests the approach to poor relief in Eastern European countries developed along lines that were broadly consistent with that across the whole of nineteenth century Europe: where relief was given, it was paid out of locally raised funds, dispensed on a largely discretionary basis, subject to compulsion to work and the exclusion of strangers. But as elsewhere, certainly in the Polish case, there is evidence of moves towards more centralised supervision.

It was not until after WWI that Poland and Estonia emerged as independent republics, a status that each country briefly enjoyed until WWII. In this period both countries began to develop social welfare policies. In Poland: the Social Welfare Act of 1923 portended an explicit shift from 'social help' to 'social welfare' and the beginnings of social insurance-based social security provision, including a limited health insurance scheme. There was provision for compulsory and free primary education by a decree of 1919 and under the 1921 constitution, with further reforms to secondary and supplementary vocational educational provision in 1930s. Steps were taken for the regulation of landlords and some state investment in low-cost housing. The Estonian constitution of 1920, modelled in part on the Germany's Weimar Constitution (see above), provided that:

The organisation of the economic life in Estonia must correspond with the principles of justice, the object of which is the securing of conditions of living worthy of human beings by corresponding laws relating to the acquiring of land for cultivation and a home, and the obtaining of employment, as well as the necessary support for the protection of maternity, labour, youth, old age, disability, and in cases of accident. [Article 25]

The constitution made express provision for free and compulsory basic education and subsequent legislation providing for substantive systems of social care, health care and social security (Tavits, 2014).

Estonia was occupied and absorbed into the Soviet Union in 1940 as a Soviet Socialist Republic. Poland was subject during WWII to invasion by both Germany and the Soviet Union and the People's Republic of Poland, established in 1945, remained effectively under Soviet control. In Poland, the liberal principles of the 1923 Social Welfare Act were abandoned. Social assistance became a residual/discretionary function of the communes. There was direct state management of dwellings through a billet system, but subsequent liberalisation and provision for housing co-operatives. Nevertheless, there was an extensive democratisation of healthcare, with free state provision. And the 1952 constitution provided for pre-school, primary, and secondary and vocational education. The development of social policy in Estonia was directly linked to that of the Soviet Union (e.g. George & Manning, 1980) with its own distinctive welfare regime based on guaranteed employment, subsidized prices and extensive state-enterprise-based social benefits. The level of wages, benefits and pensions were comparatively low and the standard of health and housing provision, for all but the Communist Party elite, could be poor. Under Soviet Communism it may be argued that social rights - as declared in the UDHR - were realised up to a point, but from a liberal-democratic citizenship perspective they were compromised by the absence of complementary civil and political freedoms (Marshall, 1950).

In any event, a combination of factors led eventually to the collapse of Soviet Communism and in 1990 both Poland and Estonia were restored as independent republics, each of which would establish a new constitution, containing some (albeit sometimes indirect) provision for social rights. Poland's Constitution of 1997 provided: a right to social security that ostensibly included a right to social assistance; an obligation on public authorities to pursue policies conducive to satisfaction of housing needs and to combat homelessness; a right to protection of one's health and equal access to healthcare services; a 'right' to free compulsory education to age 18 - with choice of schools and equality of access. Estonia's Constitution of 1991 provided: a right to 'adequate' assistance in case of old age, incapacity for work, loss of provider, or need; no express provision for



housing; provision for protection of health; for education to be Compulsory and free from age 7 to 17. In practice this has meant that both Poland and Estonia have had, for example, to shift from centrally provided and managed health care systems to a decentralised model, funded by social insurance with an emphasis on public provision, albeit with an emphasis on consumer rights (Świątkowski & Wujczyk, 2014) and/or the principles of a market environment (Lai et al., 2013).

There are differences, however, between the trajectories of the two countries. Poland is a much larger country than Estonia and has a strong Catholic tradition compared with Estonia's weaker religious traditions (Catholic and Lutheran). Poland is more closely linked to the German corporatist traditions, which Estonia as one of the small Baltic States to be especially influenced by IMF inspired neo-liberal economic orthodoxies (Cerami & Vanhuyse, 2009).

SYNTHESIS

The picture provided above is based on lowest common denominator summaries of the country case histories provided by our participating partners and omits — a variety of detailed explanation of social policy development; nuanced discussion of the ideological compromises informing such development and of subtler cultural influences (cf. Pfau-Effinger, 2005); insight into the moral and legal foundations of social rights and their justiciability; and critical concerns regarding conflicts between the practice of social administration and the principles of social justice. What emerges, nevertheless, is a mixture of differences and convergences. The historical variations have been driven by major geo-political events, but the emerging welfare regime variations since the development of the EU are arguably, and increasingly perhaps, a matter of degree.

But this doesn't clearly tell us is with what consistency the cause of social rights has been understood and accepted across Europe. If we take the ratification of social rights treaties as an indicator of national commitment to social rights, and record whether the eight countries in our study have ratified the Council of Europe's revised 1996 Social Charter, whether specifically they have accepted the collective Complaints Procedure provided for within that Charter and whether they are subject to the EU's Fundamental Social Rights Charter incorporated in the 2009 Lisbon Treaty (a protocol to which allows countries to opt out), the results are as shown in Figure 3. By these indicators, it would appear that Sweden and the Netherlands are the most committed, the UK and Poland the least committed to the cause of social rights.



	Ratification of the revised European Social Charter 1996	Acceptance of ESC Collective Complaints procedure	Subject to EU Fundamental Social Rights Charter under Lisbon Treaty
Sweden	✓	✓	✓
Denmark	x	x	✓
Netherlands	✓	✓	✓
Germany	x	x	✓
UK	x	x	x
Spain	x	x	✓
Poland	x	x	x
Estonia	✓	x	✓

Figure 3: Indicators of national commitment to social rights

History can tell us about the political and legal construction of social rights, but we are left to *infer* how social rights have been commonly regarded and understood; how the individual has been constituted in relation to her claims upon society; and how, by implication, the social subject may have been constituted in relation to the state. The summaries above tend to confirm four intersecting influences on the social construction of the rights-bearing subject.

First, religion and the framing of the Poor Laws. In all eight countries the emergence of the welfare state was preceded by charitable poor relief, administered initially at parish level by the Church. Such administration was subject by stages to varying degrees of legal regulation through the Poor Laws. Whereas it was originally Catholic Church doctrine that governed the more or less arbitrary collection and distribution of alms, following the Reformation ever closer attention was paid to systematic provision and to the distinction between supposedly deserving and undeserving supplicants. Famously, Martin Luther urged the prohibition of begging and the reform of relief systems (*Liber Vagatorum* 1528) and from the sixteenth century onwards the trend towards stigmatising conditionality in the administration of poor relief could subsequently be observed across Europe in Catholic and Protestant countries alike (Foucault, 1965). Nevertheless, the tension between the underlying logic of Catholic and Protestant traditions continued to have some influence on the emphasis and design of secular Poor Laws until the nineteenth century. As we have noted, Catholic social doctrine would evolve in ways that would accommodate the coming of the modern welfare state, but its initial impetus favoured conservative principles of charity and *noblesse oblige*, casting the individual as a supplicant, subject to the traditions of the social order and the authority of the Church; in contrast to the idea of the individual as



a different kind of supplicant, accountable ultimately it was supposed to God, but who's maintenance and conduct might nevertheless be subject to state regulation (Dean, 1991).

Second, capitalism and the 'social question'. It may be seen that across Europe before, or soon after, the turn of the twentieth century there was what might be regarded as a strategic social liberal 'turn'; a wave of concern amongst liberal/bourgeois intellectuals about the social consequences and diswelfares of industrial capitalist development. It was a concern motivated as much by self-interest as compassion, but an impetus to what might be aptly described as a form of 'reluctant collectivism' (George & Wilding, 1985). Social liberal thinking may be seen to have played a decisive part in the creation before WWII of incipient welfare states in all of the eight countries we have studied. In some instances these early developments were interrupted, but in every instance they would seem to have provided the foundations on which forms of provision for social rights would eventually be founded. What these developments had in common was that they each re-constituted those who might have been potential *supplicants* under the Poor Laws as *workers* within the capitalist economy. Social liberalism was not the only ideological influence: social conservative and social democratic influences were also at work. But the organising principle around which social liberalism achieved a strategic consensus was that of social insurance. The social insurance principle appeals uniquely both to individualistic and solidaristic ideals. It entails individual contribution and collective risk sharing. It is authoritarian insofar as membership and contributions are compulsory and insurance schemes are rule-bound. But it is also emancipating, since it creates indisputable rights for workers to benefits, pensions and/or health treatment. It provided a foundation for the modern Keynesian welfare state.

Third, constitutional citizenship. There is no straightforward connection between the extent to which, or the manner in which, provision for social rights in national constitutions is reflected in countries' commitment either to supranational social rights treaties (see Figure 3), or to the precise configuration of national welfare states. Nevertheless it is through constitutions that rights of citizenship are explicitly or implicitly defined. In four of the eight countries studied (Germany, Spain, Poland and Estonia), constitutions with express provision for social rights were adopted, albeit fleetingly, in the period between WWI and WWII; in three (Sweden, Denmark and the Netherlands), a clear constitutional commitment appeared only after a welfare state was fully established; and the UK has never had a written constitution. The earlier constitutions were all quite similar and bore the imprint of the social liberal wave alluded to above. The later constitutions reflected the language of the UDHR and/or the ECHR/ESC. The common feature of the thinking that contributed to all these documents, and by which the citizen as a bearer of rights was therefore constructed, was an element of liberal individualism. The subject of social rights was, in theory and in part, not only a *worker* (or, less directly, the dependant of a worker) but an individual *citizen*.²

Fourth, changing economic orthodoxies. The 'Golden Age' (Esping-Andersen, 1996) of post-WWII social citizenship accommodated a form of social liberal/social conservative/social democratic consensus, a phenomenon in which six of the eight countries we have studied were able to participate, while two (Poland and Estonia) were at that time subject to state communist control, albeit that this did entail state provision for the social protection of workers. The crisis that befell the capitalist welfare states in the 1970s precipitated changes that have been variously interpreted as retrenchment, residualisation or recalibration; and the subsequent era has been variously described as post-industrial, post-Fordist or post-modern (e.g. Powell & Hewitt, 2002). Welfare states remained relatively resilient but have responded - to a greater or lesser extent - to changes in prevailing economic orthodoxy; a neoliberal orthodoxy whose influence extends to the economic

² While the gendered nature of social insurance-based welfare regimes systemically benefited the male breadwinner citizen and subordinated the social rights of women, the emergence of independent rights of women has since the 1970s been advanced to some extent through EU equal treatment directives.



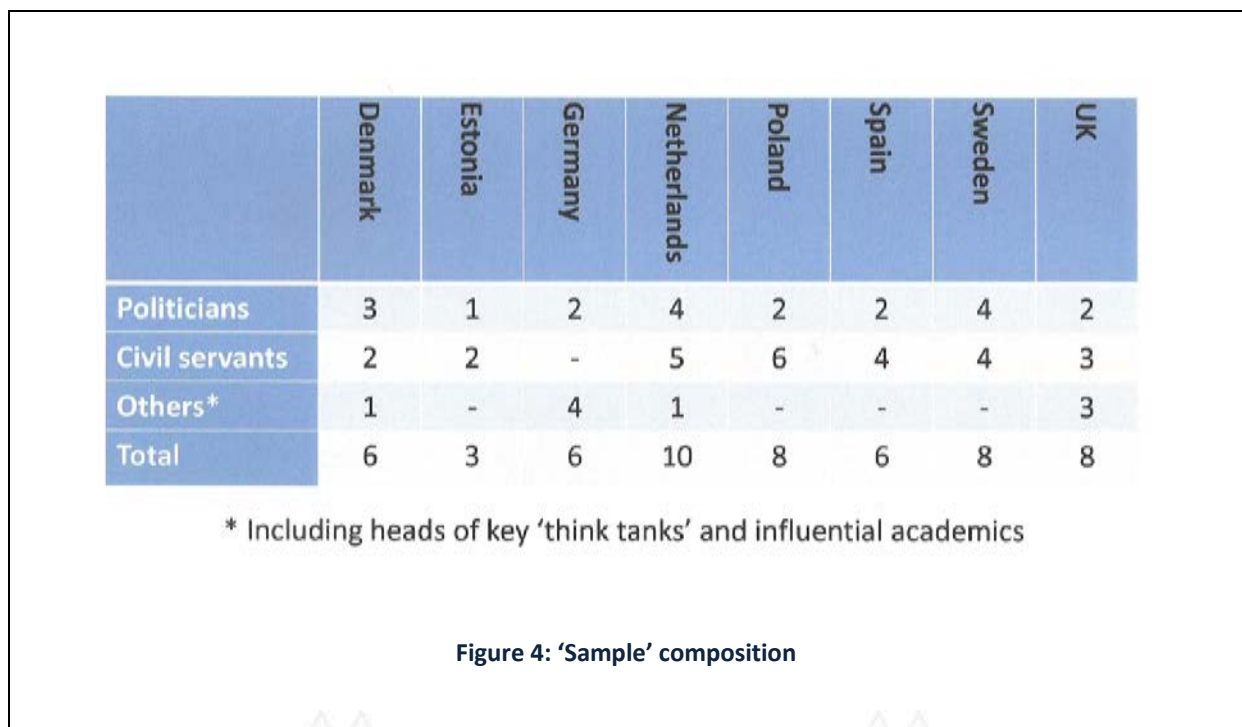
priorities adopted by the EU (Hermann, 2007; Barbier, 2014: 104) and, of course, to the post-communist countries that have since 1990 re-entered the capitalist welfare-state fold. None of the capitalist welfare states studied have been wholly immune from the trend from Keynesian Welfare State to what Jessop (2002) has characterised as the Schumpeterian Workfare or Competition State and, in particular, the trend to liberalisation or re-commodification of public utilities that the EU actively promotes (Leibfried, 2005). As a result the subject of social rights may now be socially reconstituted, not as a *citizen*, but in part as a *consumer* of public services (including healthcare and educational provision), or once again in the case of *workers* subject to 'workfare'-style labour market activation policies, as a *supplicant*.

Politically and legally constituted social rights do not necessarily translate into *de facto* social rights (cf. Janoski, 1998), nor are they necessarily truly 'social' in the sense that they reflect the essence of substantive social relationships (Isin et al., 2008). The key to the social construction of social rights is the manner in which the subjects or bearers of those rights are constituted. What our country case histories emphasise or confirm are key transitions in common. The end of the Poor Laws across Europe at or around the turn of the twentieth century was driven by a social liberal turn, by which certain subjects of social rights who had been socially constituted as supplicants were reconstituted as workers facing potentially insurable risks. Over time and by different stages welfare state regimes emerged which socially constituted the subjects of social rights - sometimes ambiguously - as citizens of equal social status. But since the 1970s, subject to the influence of neoliberal economic and managerial orthodoxies, as bearers of social rights, some workers have again been constituted in part as supplicants and some citizens have been reconstituted as consumers. The social basis for social citizenship in Europe was never uniformly established and, arguably, is now unravelling.



3. CONTEMPORARY DISCURSIVE CONSTRUCTIONS OF SOCIAL RIGHTS

The second part of the task on which this paper reports entailed key-informant interviews with a small selection of policy actors from each country. Participating partners were asked to conduct or arrange face-to-face interviews using a standard semi-structured interview schedule (see Appendix A) with between 6 and 10 key informants, including politicians and senior civil servants or professionals engaged in the planning and delivery of relevant services, and particularly those with responsibility and/or expertise relating to social assistance, housing, healthcare or education. Interviewees were to be recruited using opportunity sampling techniques. Participating partners were asked, at their discretion, to include key civil society actors (e.g. leaders of relevant NGOs) or other experts (including, possibly, leading academics): that is to say actors with influence, representing dominant strands of opinion within, or close to, each country's policy making establishment. Details of the final 'sample' of 55 actors with whom interviews were conducted are as summarised in Figure 4.



All interviews were conducted on the basis of informed consent and in confidence. All interviewees were offered anonymity. The procedures and safeguards adopted were formally approved in advance by the London School of Economics' Research Ethics Committee. Interviews were audio recorded, anonymised (unless the interviewee has waived her/his right to confidentiality), transcribed and translated into English, where necessary. The transcripts were analysed at LSE with assistance from NVivo qualitative data analysis software.

This was a qualitative research study. The respondents who were interviewed did not constitute a representative sample in a statistical sense. What we were sampling for the purposes of this study was the discourse of eight national social policy communities. We cannot be certain that in the process we captured a full range of relevant component discourses and no claims are made as to the generalisability of our findings.



What we can offer are unique insights into the dynamics of social policy discourse and debate in various national settings across Europe as it bears upon the social construction of social rights.

UNDERSTANDINGS OF SOCIAL RIGHTS

As may be seen from Appendix A, the intention of the interviews was to explore the respondents' understandings of social rights - as a concept; as a commitment; their relationship to needs and responsibilities; and with regard to the identity of the social rights bearer. We shall consider the respondents' responses to each in turn

1) THE TERM 'SOCIAL RIGHTS'

Respondents were asked what they understood by the term 'social rights' and whether the term was meaningful and familiar to them. For some respondents the term proved to be unfamiliar, or was vaguely understood or even rejected: for example, *"Well, I guess it would be... Well let me just start off, I don't really understand anything in the sense there is nothing that just leaps out"* [English civil servant]; *"I never think in the term social rights, I think more in the term basic needs. You need to make sure that people do not fall between two stools. I think that is important. Whether that is a right, that again I find such a word? ... No!"* [Dutch politician]. Other respondents embraced the concept in principle, though their perceptions were varied and inconsistent.

One such perception regards social rights as human rights: they are 'portable', in that they apply no matter where one comes from or lives within the EU. They ensure that one has the freedom to live a life with dignity: for example, *"And of course these [social rights] are based upon the concept of human rights and life with dignity, and when in need society is **obliged** to assist you..."* [Danish civil servant]. This could be linked to the idea that social rights guaranteed the ability to participate in society, since access to basic provision in the form of social assistance, healthcare, education and housing is essential for such participation, though what was meant by participation could vary between, for example, the ability to have a family or the ability to own property: social rights, in other words, facilitate other rights. The idea could also be linked to notions of fulfilment, wellbeing or security: for example, *"I believe that social rights are...acquired rights that have much to do with well-being as a whole. With well-being as a person, internal well-being, well-being of relationships with the others and the well-being of life in the environment."* [Spanish civil servant]; *"But really, so to me social rights are a number of security factors, fundamental security factors, and I'd like to add a sense of community, relationships and health and also some type of existential health...people should have a right to create meaning in life."* [Swedish civil servant].

A second perception focused not so much on rights to health care, housing, education and social assistance, but on wider labour or cultural rights, with references to access to buildings and work for disabled people; labour rights, such as the right to a living wage, good working conditions and the right to assembly and strike; and cultural rights—such as affordable access to theatres, museums, and cheap bus tickets. For example, *"...in general rights that make it easier to be a citizen or for certain categories of people to be citizens."* [Danish civil servant]; *"Poland, as a member of the European Union, and a founding member of the International Labour Organisation, acts as a guardian of fundamental human rights, including social rights, labour rights, improving employability, improving efficiency of social security and strengthening the social dialogue."* [Polish civil servant]

A third perception focused on rights to a minimum existence; to food, shelter and clothing, during a period of hardship. For example, *"providing that basic facility, making sure that someone can bridge that period and can buy food and drinks."* [Dutch civil servant]; *"right as a human being to be helped, if you are in*



need...that we as human beings can survive.” [Danish politician]. However, the notion of what is constituted by ‘minimum existence’ might extend to abstract notions of human dignity, so resonating with the first of the perceptions outlined above. For example, a German think tank director, alluding to the German concept of ‘Existenzminimum’ said *“Ok, the basic social rights. Here it is about human dignity.”*; or *“In my opinion, social rights are a group of privileges for a person who—for certain, often economic reasons—cannot live with dignity.”* [Polish politician].

A fourth perception immediately identified the term social rights with rights created through social insurance and the means by which to manage classic social risks: unemployment, illness and old age. For example, *“What I mean by social rights? It is a complex of legislation that provides protection to those who need it. This protection is in regard to certain risks that may occur; risks that are difficult to insure privately due to which the central government has a duty to take care of that. All social security laws that we have in the Netherlands are a result of that.”* [Dutch civil servant].

A fifth and final perception identified by our analysis, and one commonly expressed by respondents, regarded social rights as products of law or convention. Social rights are straightforwardly the creation of constitutions and/or legal frameworks: they are what are sometimes described as ‘black-letter’ rights. For example *“When an entitlement to a basic social minimum is in the constitution, then the state must guarantee that. And the state has done that through enacting the social code book. That means that when constitutional rights have been established then the state must enforce that.”* [German academic/government adviser]; *“So that’s how I think of social rights, as something specified in the constitution.”* [Spanish politician]. Some respondents were clear, however, as to the limits to which constitutions can create social rights: *“No, the right to benefit, as expressed in the Constitution, is a duty of the government and not an absolute right of the citizen. So that means that government may impose obligations towards citizens in regard to it. It is not that the public has an unconditional right.”* [Dutch civil servant]. And others looked not to their own constitution, but for example to the ESC: *“This [the European Social Charter] is the important document and from that document Estonia has begun its obligation to guarantee the social rights.”* [Estonian politician]. It was not so much law that defined social rights as the established conventions and customs by which individuals live in a given country. Here social rights are perceived as integral to one’s status as a citizen. It is only natural that resources are shared among citizens through guaranteed social rights. Whether these rights extend far enough is another issue, but at the core, they are assumed as a natural consequence of living in a developed nation. For example, *“But I do believe that Spanish society has a very entrenched idea that everyone should enjoy the same resources and that they are entitled to do so.”* [Spanish civil servant].

2) RESPECTING, PROMOTING AND FULFILLING SOCIAL RIGHTS

Respondents’ were asked the extent to which—if at all—they thought their country’s government respected, promoted and/or fulfilled rights in relation to social assistance, housing, healthcare and education. What emerged were not so much reflections on the principle of progressive realisation, as expressions of a widely held sense that social rights across these four areas are not one and the same. The ‘bedrock’ welfare state services, healthcare and education (Dean, 2015), enjoy greater legitimacy as social rights than social assistance or housing. Healthcare was the most likely to be regarded unequivocally as a universal right; housing the least likely.

When asked, most respondents viewed healthcare as a social right. The idea that a country would not ensure a right to care seemed unimaginable to respondents across all eight countries. For example, *“It’s not easy to say which right is above another. But it’s a reality that health and education in Spain have had a*



much stronger development both legally and regulatory than other areas or other rights which the population has access or should have access, such as social assistance, social services, or housing. I believe that it is precisely because of what emanates from the feeling of citizenship. The right to health is not only laid down in the Constitution but is also one of the basic human rights, that every person by the fact of being a person has the right to be treated so that your health is always attended, which does not always occur.” [Spanish civil servant]. But when pressed as to whether they thought their government respected, promoted and fulfilled the right to healthcare, a number of concerns were expressed in relation to recent policy trends and public spending constraints and, by implication, the extent to which these might be threatening rather than realising social rights. For example, *“But then you still see that you can buy insurances, employers are offering complementary insurance so that you’ll get medical attention faster and that may lead to people being less willing to pay taxes and, well the consequences of these changes really need to be analysed and I belong to those who believe that we can benefit the most from, from giving everybody the same access.”* [Swedish civil servant]; *“We recognize that 6.5 million people cannot pay the healthcare premium of the Healthcare Insurance Act, which is mandatory, and we have – thanks to God – created the healthcare allowance...[but] ... if it again becomes a right of people to healthcare, then the municipalities will declare they... [cannot] ... pick up that open end financing ...[but will]... say mid-September to someone: yes you really do have a right to healthcare, but there is no money so come back in January... I think that parts of people's right to healthcare is eliminated, and certainly the part of quality of healthcare.”* [Spanish politician]; *“According to article 68 of the Constitution of the Republic of Poland everyone has the right to health protection. The healthcare system is indeed available to every citizen. A separate and extremely complex issue is the availability, efficiency and effectiveness of the healthcare system. We have huge problems with that.”* [Polish civil servant].

Education was similarly perceived as a social right by most respondents, largely because all countries in this study have long since legislated for ten to twelve years of compulsory schooling, funded through general taxation. This, it was generally assumed, fulfilled the right to education. For example, *“We offer everybody education, sure the point can be made that the education should be better. But everyone has access to education. We have compulsory school attendance, those who don’t show up are followed up on, parents get feedback and we’re seeing, at a political level, a general tightening up, for good and bad and we can talk all day long about PISA results, about how much the teachers should get to decide things, about whether the municipalities or the state centrally should be in charge, but as a social right we’re fulfilling it.”* [Swedish academic/ former civil servant]. But there were frequent concerns about equity and quality of education. Problems with variation in quality, led some respondents to question whether their government had completely fulfilled, respected or promoted rights to education. Schools were often perceived as being hierarchically stratified which has undermined the idea of quality education for all, irrespective of socio-economic background. For example, *“...well, in Britain I think there is still a broadly comprehensive system, but the way in which it is delivered is increasingly fragmented, with competition between parents for places, and between schools. But to describe that as a social good when the whole point is to individualize, to get people to compete, seems difficult for me to accept it as a social right. And clearly if it is a social right, then there should be some sort of egalitarian concept attached to that where people get at least equal; access is not loaded access in terms of how poor or where you come from. This does not feel very social to me.”* [Head of an English policy think tank].

All respondents acknowledged that a system of social assistance was in place in their respective countries and that *“Everyone at least has access to something.”* [Danish civil servant]. And because countries have legislated to guarantee the provision of support when needed, some respondents felt their government had fulfilled its obligation. That said, respondents did not necessarily indicate whether they felt that social assistance is a social right. Indeed, there was considerable disagreement about the extent to which the right to social assistance should be or is sufficiently realised. One of the principal issues revolved around



whether the cash benefits in payment were enough for individuals and families to live on. For example, *“When one looks at the Hartz 4 laws, when one sees how little [cash] that is [per month]—for an individual but also for a family—then social assistance is at best respected, but not promoted and not fulfilled.”* [Head of a German think tank]. The other issue was the shifting nature of social assistance from a right based on need, to a right based on recipients demonstrating responsibility in finding work. While some respondents approved of this development, others feared it discouraged potentially vulnerable people from exercising their right to social assistance or resulted in individuals being placed in low paid and insecure jobs. One Dutch politician complained about the impact on disabled people subject to new requirements but for whom provision for sheltered employment had been withdrawn: *“but the people with disabilities who only have jobs through sheltered employment you cannot abolish. We actually have nothing to offer them. One may well redefine the welfare state, but you cannot get more people with disabilities to work, so what are those social rights - if you have them, but cannot do anything with them - then about ?”*.

Most respondents did *not* regard housing as a social right, principally because it appeared to them impossible to guarantee housing for everyone. Housing was widely perceived as a market commodity that should not, or cannot now, be effectively interfered with by the state. For example, *“...when we are talking about housing we are not really talking about a social right. We are basically talking about a market intervention. So I think the discourse around social rights is quite weak in the UK partly because the discourse of rights has always been quite weak in the UK and remains so.”* [Head of an English think tank]; *“Today we think of our homes as assets, an economic ... um, yeah it has become a commodity. So if you have nothing to bring to the table, no money, no work and maybe you even have some social conditions, then nobody is interested in getting you into this market. maybe it has happened gradually, but now it has become something different than a place to live. I really think so. It signals status, it says so much more about you. And we have people who don't have any of that stuff that's attractive to – neither to sell nor rent to. It's hard to get established.”* [Spanish politician]. Responses varied as to just how effectively state intervention might in fact succeed in fulfilling rights to housing. For example, Danish respondents tended to report that their government respects, protects and fulfils a right to housing because the Danish government financially invests heavily in the provision of demand- and supply-side policies. While housing as a right is not enshrined in the constitution it is guaranteed because rent subsidies are available to low-income individuals and families. Yet in the Netherlands respondents tended to report that a right to housing was not fulfilled. While some claimed that the supply of affordable housing units is supposedly improving, respondents acknowledged that waiting lists are still too long; there is a mismatch between the specification of dwellings available and the requirements of households in need of them; and support for homeless households is impeded by the perversity of contradictory housing and welfare regulations.

3) NEEDS, RIGHTS AND RESPONSIBILITIES

There was ambivalence among respondents as to the relationship between needs, rights and responsibilities. It was generally acknowledged that identifiable needs may give rise to state responsibilities for the meeting of such need, but subject to variously conceived constraints. These constraints related to the financial cost of meeting need; political constraints and limits to political will; and a belief that entitlement should be conditional on the demonstration of individual responsibility. Respondents could on occasions resort explicitly to the language of contract to address these issues and to this we shall return later in the report. But, importantly, even respondents hostile to the concept of social rights could acknowledge some form of connection between citizens' needs and state responsibilities: for example, *“So again, I am wanting to stop short of using the 'rights' term here. But it is clear that individuals do have entitlements which the state has a duty to provide them with and there are mechanisms of redress by which*



they can hold the state to account if they don't feel it is meeting its duty to provide those entitlements."
[English civil servant].

The first of the constraints mentioned above relates to the cost of meeting need, something that is inherent to provision for social rights: *"Understanding that that is the right, I understand that it's an obligation of the State to provide adequate resources and means so that the people are entitled to equality in their development as such and in their daily lives."* [Spanish civil servant]. But another way of putting this is to say *"all social rights are a drain upon the treasury."* [Danish academic]. But cost constraint is intimately linked to the second constraint and the question of what is politically possible. Respondents acknowledged the especially fragile position of social assistance and housing when governments do not guarantee a right because any entitlement or provision of benefits and services can be increased or decreased depending on the political climate at any given time. For example, *"Rights are conditional, they're not a free-floating thing. ... The fact that all law emerges from policy and politics are political decisions, you cannot simply produce these social rights out of thin air independently of material circumstances."* [Danish civil servant]. What is more, a discussion about rights cannot take place without acknowledging how the system of rights is financed. Some respondents reflected on the way that healthcare, social assistance, housing and education are currently financed poses limitations to the fulfilment of rights. The ability of the state to meet the needs of its citizens depends on the political will to legislate and then adequately finance housing, education, social assistance and health care. As one Spanish civil servant mused, it is possible with policy proposals in *"...[in]... say social welfare and education, to reach agreements. It could happen with political will. All you need is political will. But in housing you need more than political will. It takes development and...of course, there is the question which is key, that of finance...when I say political will, I mean from all involved. I mean all the parts of Governments and I'm talking as much the State and the Autonomous Communities."*

The third constraint upon the acceptance of collective responsibility for meeting needs was a moral reservation: the idea that rights should be conferred only upon citizens who can demonstrate individual responsibility as well as need. Respondents who agreed that social rights are necessary to a well-functioning society could differ as to where the right balance in the financing and provision of rights might lie. Some respondents felt that more responsibility should be placed on the individual, rather than the state to cover social risks. They agreed that the state has a responsibility to provide education, health care, social assistance and to some degree housing, but they also felt that it was first the responsibility of the individual to exhaust all their resources and where a need still exists, then it is the responsibility of the state to meet that need. Others explicitly agreed that the provision of, for example, social assistance was necessary but equally thought that the right to social assistance should include reciprocal responsibilities. Even in Social Democratic Sweden, one politician observed, *"Yeah...we [the state] have a responsibility but there's also personal responsibility. So there is not a responsibility were the state doesn't ask for anything in return. You have a personal responsibility to try to take care of your health, you have a responsibility to manage your economic life so that you can afford housing, but in those cases where you end up in a situation where you have, where you despite trying to act responsibly end up in a situation you can't handle, we have a shared responsibility."*; and another said *"Mnnn...social assistance we have a right, when you have met certain requirements. Sometimes they can be pretty tough; you may need to sell your car, you may need to sell your flat. But when you really, really need it [social assistance], it's there for you. And then it's a right."* The debate around responsibility centred especially around employment: the idea that one has a responsibility to be fully employed because it is through full employment that one can enjoy and realize rights through social insurance contributions. And if one is not employed then it is a responsibility to demonstrate that one is looking for work. Respondents were by and large aware of the refocussing of labour market activation policies upon individual behaviour rather than structural causes and though some approved,



others would express concern about this and about the general direction of change. For example, *“I think we [the Danes] come from a starting point which is really strong, but where certain extreme things that are happening at the moment are quietly moving us away from that starting point. I think there are some trends, surrounding the idea of being proud to pay taxes and being a welfare state, combined with relatively large pressure on public spending after the financial crisis, which leads us to cut down on a lot of things, such as unemployment benefits. This is a social right that is being eroded. It is also now being discussed whether people should pay to visit the doctor. It is a discussion, which would have been completely idiotic to have in the seventies, but is being brought up now.”* [Danish politician].

4) THE BEARERS OR HOLDERS OF SOCIAL RIGHTS

Finally, respondents were asked which people have rights to social assistance, housing, healthcare and education and on what basis. Our purpose was to see how the bearers or holders of social rights are constituted in the minds of policy actors. Were they regarded primarily as supplicants, workers, consumers, citizens or human beings? In the event, respondents defined the status of the social rights holder largely (but not invariably) in technocratic terms; in categorical and administrative rather than conceptual or relational terms

When first asked, respondents tended to allude to the administrative and legislative criteria an individual had to meet in order to receive housing, education, healthcare or social assistance. Rights bearers were defined by whether or not they had incomes below a certain threshold; whether they were children of compulsory school age; whether they were technically homeless; or whether they were in need of basic health care, irrespective of whether they have insurance or not. Respondents often then progressed to talking about citizenship and residency status, albeit very much in terms of those who had a passport and a national identity number and card, and/or lived and worked in the country of their citizenship.

It was striking that many respondents' focus was on citizenship as an exclusive rather than an inclusive criterion. They seemed to be drawn to debates about migration and who is not or should not be a rights holder. For example, *“Well, in principle that all has everything to do with citizenship—whether you are a German citizen or not. Naturally, what do I know, asylum seekers, their children get to go to school etc. But in the first instance it has to do with what nationality one has, in other words, which framework your status is, whether one comes from the EU or outside the EU, whether one is an asylum seeker is.”* [German politician]; *“Worth noting is the different situation of Polish citizens and foreigners prescribed in the Polish law system as regards fulfilment of the right to social assistance and medical aid. Access to those services is provided only to those foreigners who hold a permanent residence card which is issued after 3 years of residence in Poland. In this respect Poland obviously violates the binding provisions of the European Social Charter.”* [Polish civil servant].

There were two elements to this preoccupation. The first was concerned with the principles of entitlement and who had contributed to the social contract by paying taxes and social insurance. The feeling was that the freedom of movement (and immigration more broadly) has eroded or undermined the strength of the social contract—a contract that is built on one generation contributing for the next generation. For example, *“Now it is enough that you reside in Denmark as an EU citizen, this entitles you to all sorts of rights here. And it is really on this point that things don't add up any longer, as the system only really works if people contribute to it. You receive access to education and training, and then you work throughout your working life and finally receive a pension. But if you are only in Denmark during a period in which you aren't working and thereby receive benefits before returning home again, then the system doesn't work and that presents a challenge to our welfare model in any case, that we do not have a permanent population, but*



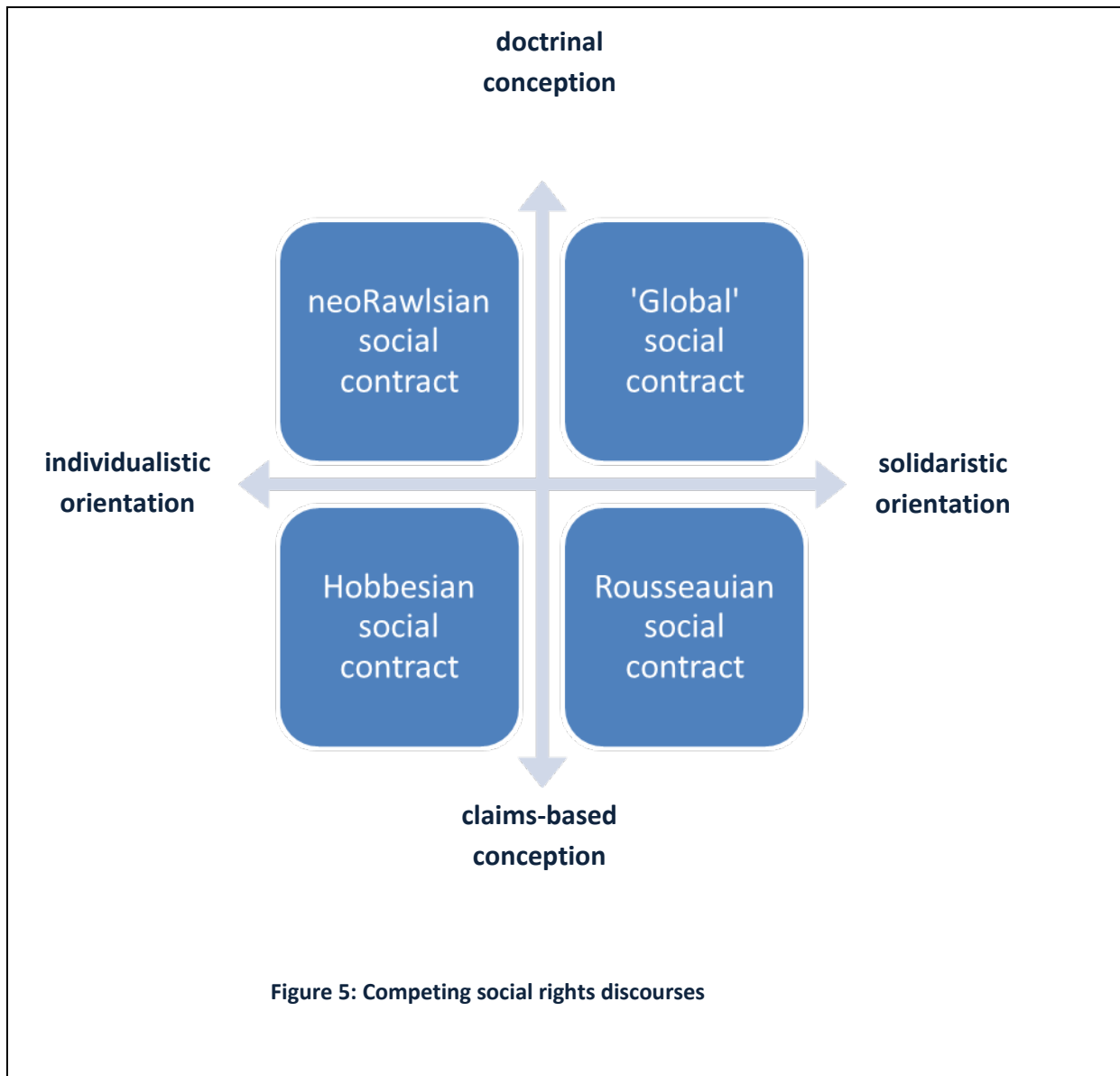
one that fluctuates back and forth.” [Danish politician]. The solution advocated by some and feared by others was to develop two-tier systems of social provision: one for legitimately settled citizens and another less generous safety-net for migrants or foreigners. The second element to the preoccupation with migration was an ostensibly more hostile attitude to so called ‘welfare tourism’: a fear that migrants would move to a country deliberately to take advantage of its generous welfare state and as a result become an unfair burden to the state. For example, “With benefit, I believe you must be a resident, so have a durable relationship with the Netherlands. I think we reasonably provide for that. But not for example, that you can immediately receive a benefit, based on EU rules. There should be a durable bond with the Netherlands. to put it really plainly, you have to prevent the coming into existence of benefit tourism; that people come here just because of the fact that they are eligible for that facility. I find it really important that within social facilities no private demand is created. You have certain types of people in mind and it is not possible that certain new types add in and think: this is my chance.” [Dutch civil servant].

Finally, there were respondents who argued that everyone, irrespective of nationality or resident status (legal and illegal immigrants) should have a right to health, housing, education and social assistance. This was justified in one instance in terms of the economic benefits that can flow from free movement, but in another because rights to housing, health, social assistance and education were perceived as human rights, that everybody holds: “Because I am a defender of the rights of human beings. So, logically, I am not interested in where they are situated. It is true, as I said before, logically the use, access to those rights implies having services available in order to have access to these rights. These services, logically, are available in specific territories, in more structured societies, in societies that allow, well, how we organize ourselves to be able to exercise these rights for all. ... rights must be universal, just by virtue of the fact that you are a human being, I understand that you must have all those rights. Because you become part of the society in the place where you are, be it temporary or permanently. You are part of that society and therefore you should have access to the rights that you have in a structured society...” [Spanish civil servant]

In summary, the interviews revealed inconsistent (and sometimes weak) conceptualisations of social rights; marked differences in the commitment or legitimacy attaching to different kinds of social rights (healthcare and education being more clearly regarded as rights than social assistance or housing); ambivalence as to whether responsibility for meeting need is, or can be, properly mediated by rights; and a certain tendency to largely technocratic categorisations of who is, or may be, the bearer of social rights.

COMPETING DISCOURSES

What the interviews also revealed was the extent to which respondents were drawing on a mixture of competing discourses. Several respondents made explicit references to the idea of a ‘social contract’. But the apparent meaning attached to this idea varied between respondents and, on occasions, even within a respondent’s own discourse. The various ways in which respondents framed their ideas of social rights, or the metaphorical ‘contract’ on which such rights are premised, exhibited some resonance with the welfare regime models and corresponding conceptions of citizenship outlined in Figure 1 above. This can be better illustrated in Figure 5, which attempts heuristically to characterise the discourses we observed. It is important to emphasise that respondents’ discourses were not necessarily consistent with the welfare regimes of the countries from which they came and that what we are attempting very tentatively to model is the array of discourses to be found among diverse policy actors across Europe as a whole.



The taxonomy presented is constructed around two axes. Corresponding to the freedom vs. solidarity axis in Figure 1 is an axis that distinguishes between individualistic and solidaristic orientations to the nature of the contract between the individual and society. Corresponding to the equality vs. social order axis in Figure 1 is an axis that distinguishes between, on the one hand, doctrinal conceptions of rights (as rights inherently vested in human beings) and, on the other, claims-based conceptions of rights (as rights that are pragmatically framed and/or contextually grounded). The distinctions represented by each axis are dynamic rather than simple binary distinctions: the axes are conceptual devices for understanding dialectical processes. Humans negotiate life both as individual *and* as social beings. Rights are realised through an *interaction* between doctrines and claims. The labels we have chosen to characterise the different social rights discourses are intended primarily as convenient short-hand identifiers and we are not presuming to assert anything beyond fairly superficial philosophical connections.

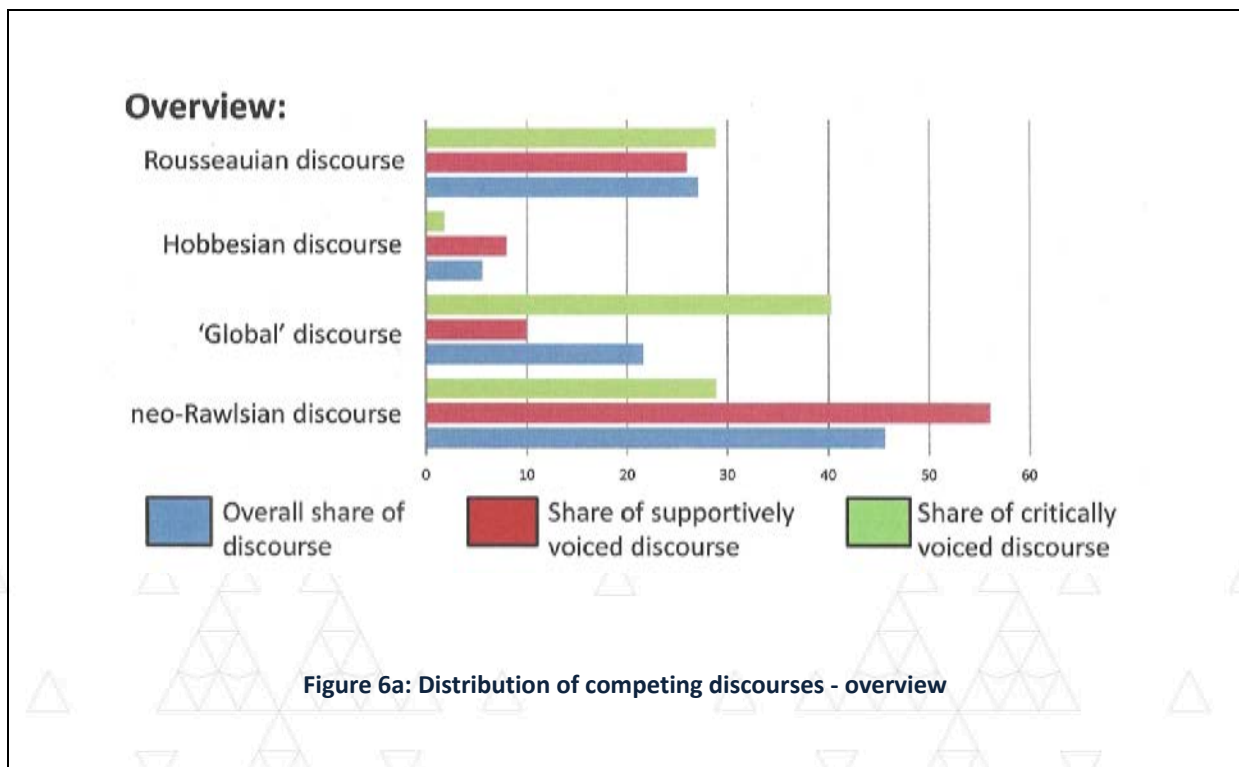


- A social contract based on a *doctrinal* conception of rights and an *individualistic* orientation would espouse an essentially utilitarian ethos and a range of constitutional, legal or regulatory principles. We would label this neo-Rawlsian. Rawls (1972) is celebrated for imagining how members of a hypothetical society - if they were ignorant of the position they would hold in that society - might agree to conjoin individual liberty with social justice. Recent followers, such as Stuart White (2003), make a strong argument for rights founded in principles of 'fair reciprocity'. This approach to individual rights and responsibilities is capable of accommodating a broad spectrum of liberal approaches to 'fairness' - from right-wing neoliberalism to centre-ground social liberalism - within which the individual may be framed as a citizen, but usually *also* as an active worker or consumer. By way of illustration, it would accommodate the following statement by one of the respondents in our study: *"We have made a social contract [and] if I have a right it is up to the state to uphold it. ... I also have a responsibility, because the right I have is the opportunity to participate in the community I'm in"*.
- A social contract based on a *doctrinal* conception of rights and a *solidaristic* orientation would espouse an essentially universalistic ethos and cosmopolitan/human rights principles. We would label this 'Global': that is to say it holds that rights are founded in ethical principles and an ideal of shared humanity. 'Global' might here refer literally to internationally defined human rights, or more loosely to shared rights of a community or a people. This approach to collective rights and responsibilities is capable of accommodating a spectrum of broadly social democratic (including, perhaps, radical social liberal) or democratic socialist thinking, within which the individual may be framed as a citizen, but fundamentally as a member of human society. By way of illustration, it would accommodate the following statement by one of the respondents in our study: *"[Social rights] are based on the concept of human rights and life with dignity. ... An individual shouldn't need to rely on his[/her] family or beg for money if (s/)he is in need, but society should make funds available."*
- A social contract based on a *claims-based* conception of rights and an *individualistic* orientation would espouse an essentially sceptical ethos and subscribe to basic survival principles. We have labelled this Hobbesian. Hobbes (1651) infamously denigrated social existence as a war of all against all, necessitating a bargain whereby certain freedoms must be constrained in return for the protection of the individual against the predations of others. His conception of the individual and the role of authority drew inspiration from Luther (see Overhoff, 1997) and was wholly consistent with punitive Poor Law traditions. This approach is more concerned with individual responsibilities than rights, but accommodates the idea that people should be enabled to survive; that there should be a safety net, albeit that it may be subject to conditions or judgements as to the moral desert of the supplicant. By way of illustration, it would accommodate the following statement by one of the respondents in our study: *"A social right ensures ... that you can survive ... that you are not dying on the street or dying of starvation"*.
- A social contract based on a *claims-based* conception of rights and a *solidaristic* orientation would espouse a civic-republican ethos and subsidiaristic/social insurance principles. We would label this Rousseauian. Rousseau's (1762) emphasis was on a social contract distilled from, and legitimised through, the common will. This approach is concerned with the maintenance of collective commitment and is capable of accommodating a spectrum of social Conservative and Christian Democratic thinking. It is consistent, for example, with the emphasis in Catholic moral teaching on solidarity and subsidiarity. By way of illustration, it would accommodate the following statement by one of the respondents in our study: *"Those who pay taxes and social insurance secure the social rights for those who, because of falling into difficulty ... rely on the solidarity of others. That is how the great risks in life ... are financed."*



To explore these underlying discourses the interview transcripts from our study were analysed in two further sweeps: the first, using the taxonomic categorisations outlined above to identify the dominant and sub-dominant discourses employed in each transcript; the second to identify from the textual context whether participants were expressing (or 'voicing') broad support or criticism of their country's prevailing social rights regime. Our respondents had not necessarily been selected on the basis that they were left- or right-wing politicians or commentators or that they were government or opposition supporters, so we based our classification of critical and supportive forms of discourse on the content of the transcripts, not the status of the respondents. The results were applied to generate weighted 'scores' for the distribution and context of competing discourses within the policy community in each country. The scores were based on the estimated shares or proportions (in percentage terms) of each respondent's interview transcript that could be assigned to each of the taxonomic categorisations and the extent (in percentage terms) of each respondent's interview that could be judged to be either critically or supportively voiced; that is to say whether categories of discourse used were called upon in support, or by way of criticism, of current provision. The scores for the respondents in each country were totalled and are expressed as overall shares (percentages) for each county using bar charts in Figures 6b and 6c. An overview, combining the results from all eight countries, is presented in Figure 6a.

The method is of course suboptimal and the findings should be regarded as primarily indicative. This element of the study was experimental in methodological terms: it is to be treated as no more than a pilot. With more time and resources the robustness of the coding used for the analysis could have been improved, but in any event the sample sizes in some instances severely constrain the substantive probative value of the exercise. Nevertheless, unless and until such time as it may be possible to refine and replicate such a study on a larger scale, the results do warrant discussion.





The overview presented in Figure 6a, presents our findings in respect of all 55 respondents and may be regarded as a snapshot of the pattern of discourses to be found among a disparate community of policy actors from across the EU. What the blue bars show is the overall share of that discourse that could be attributed to each of the categories of social rights discourses outlined in Figure 5. The red and the green bars respectively show the contrasting shares of the supportively and critically voiced discourses attributable to each category. The balance between supportively and critically voiced discourses varied between countries, but overall there was twice as much supportively voiced framing as critically voiced framing. This, however, is of less relevance than the distribution of supportively and critically voiced framing within each category of discourse.

What the overview suggests is that:

- Neo-Rawlsian discourse is hegemonic. It is generally dominant, especially in the context of voices supportive of prevailing regimes.
- Rousseauian discourse has a strong presence, whether voiced in a supportive or critical context.
- Critical voices are especially evident within 'Global' discourse.
- Hobbesian discourse is not that much in evidence. This is despite the many concerns expressed by respondents with regard to alleged social rights 'tourism', but such concerns may stem less from judgementalism towards migrants on the part of the respondents as from their awareness of controversy driven by popular opinion.

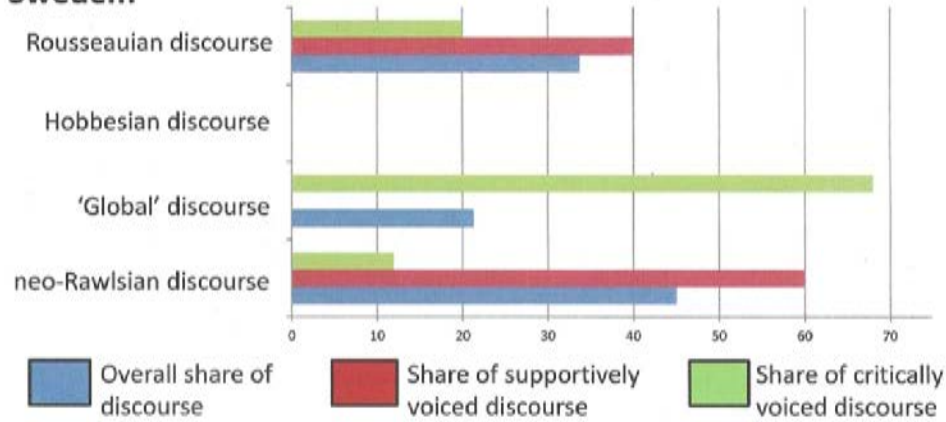
When it comes to the country by country findings in Figures 6b and 6c, these are less susceptible to useful interpretation, though the patterns they disclose are potentially of interest.

The Swedish interviews suggested the presence of a dominant neoRawlsian discourse; a significant Rousseauian discourse and a subsidiary 'Global' discourse, with critical voices distributed between the discourses, but especially evident within 'Global' discourse. The Danish interviews suggested the presence of a combination of neoRawlsian and Rousseauian discourses and a slightly less dominant 'Global' discourse, with broad support for the prevailing rights regime (but a single Rousseauian critic). Swedish and Danish respondents seemed on the whole only a bit more solidaristic than other respondents, with the Swedish respondents now more liberal than the Danes. The impression superficially conveyed was of two formerly Social Democratic countries under the sway of neoliberal influences albeit with countervailing solidaristic traditions.

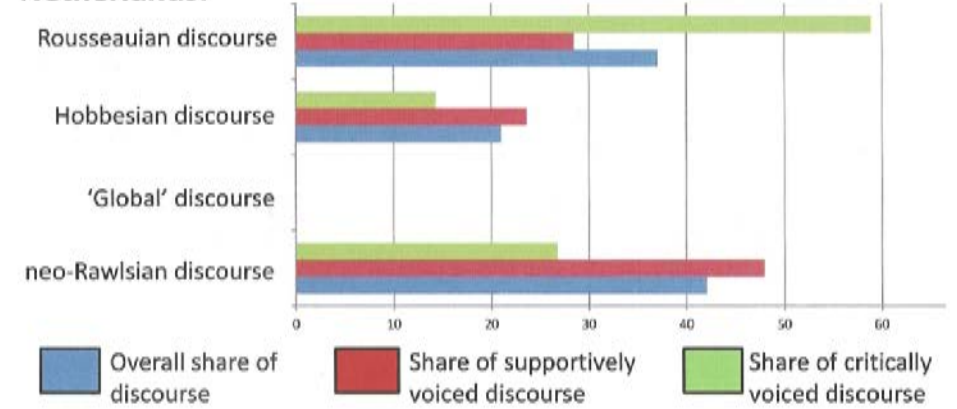
The Dutch interviews suggested the presence of a combination of Rawlsian and Rousseauian discourses, an underlying Hobbesian discourse and the absence of 'Global' discourse, with a critical voice especially evident within Rousseauian discourse (suggesting, perhaps, some nostalgia for a corporatist past). The impression superficially conveyed was of a formerly corporatist/social democratic hybrid regime now contending with neoliberal and neoconservative influences. In contrast, the German interviews suggested the presence of a strong 'Global' discourse (indicative, perhaps, of the influence of human rights principles within the post WWII German constitution and/or the strength of a nascent Social Democratic influence), but with a mixture of underlying Rawlsian and Rousseauian discourses. In the German case, critical voices outnumbered supportive voices though both were evenly distributed across the discourses. The impression superficially conveyed was of an essentially corporatist/conservative regime experiencing tensions (and debate) between conflicting social-democratic traditions and neoliberal influences.



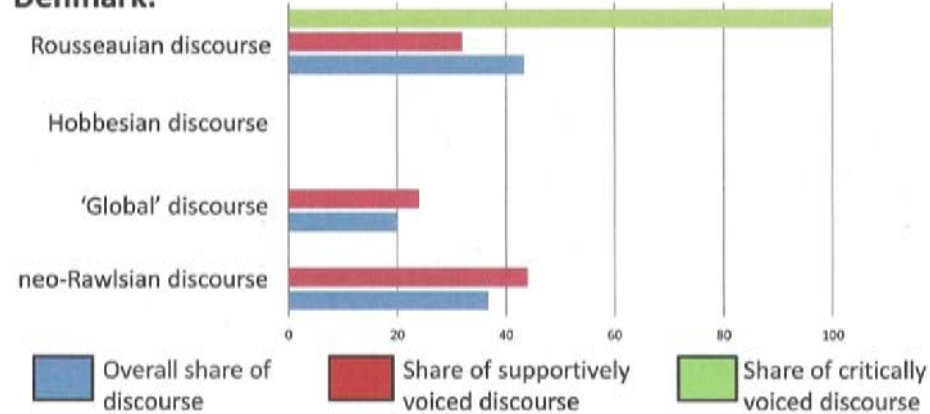
Sweden:



Netherlands:



Denmark:



Germany:

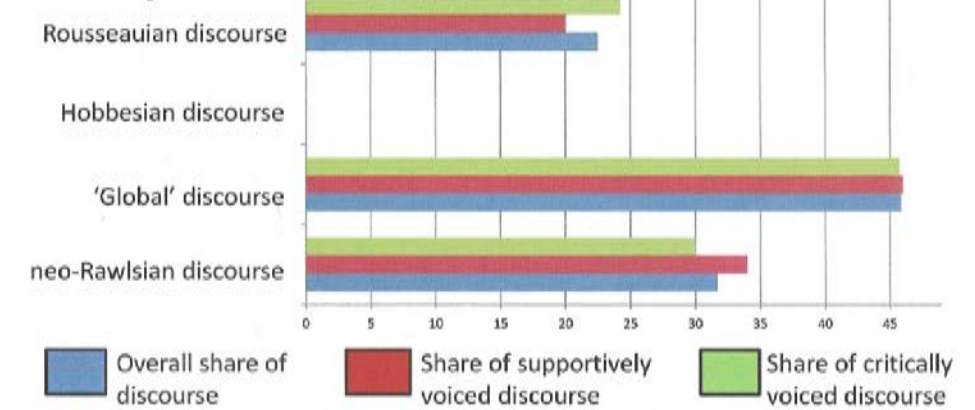


Figure 6b: Distribution of competing discourses -Sweden, Denmark, Netherlands and Germany

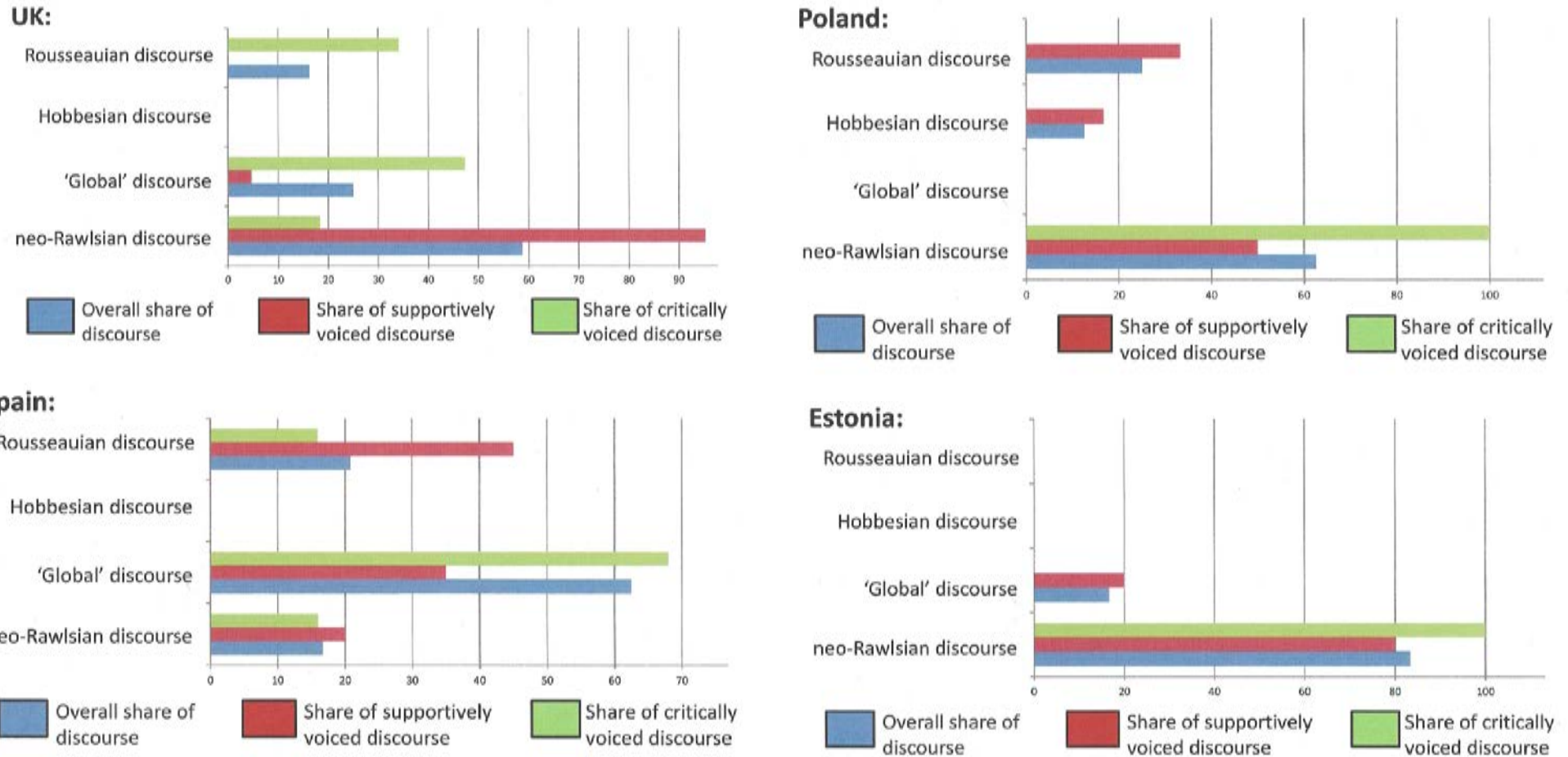


Figure 6c: Distribution of competing discourses - UK, Spain, Poland and Estonia

The UK interviews suggested the presence of a dominant neoRawlsian discourse with subsidiary 'Global' and Rousseauian discourses, and critical voices present within all, but especially the 'Global' and Rousseauian, discourses. The impression superficially conveyed was of a country subject to neoliberal economic orthodoxies, but with underlying solidaristic influences, reflecting in part the voices of left-wing intellectuals among the respondents but also the legacy of the country's past adherence to social insurance principles.

The Spanish interviews suggested the presence of a dominant 'Global' discourse, a significant Rousseauian discourse and a subsidiary neoRawlsian discourse. In the Spanish case, critical voices outnumbered supportive voices though both were distributed across the discourses, albeit that critical voices were especially evident within 'Global' discourse. The impression superficially created was of a Mediterranean regime in which conflicting social democratic and social conservative traditions are resisting neoliberal austerity economics.

The Polish interviews suggested the presence of a dominant neoRawlsian discourse, a surviving Rousseauian discourse; and elements of a Hobbesian discourse. The 'Global' discourse appeared to be absent and critical voices were evident only within the neoRawlsian discourse. The Estonian interviews suggested the presence of a dominant neoRawlsian discourse, with an echo of a 'Global' discourse. The Rousseauian discourse was absent, but it must be remembered that there were only three Estonian respondents, which particularly constrains our ability to comment. As in Poland, the only critical voice - a voice calling for faster progress - was evident within the neoRawlsian discourse. The impression superficially conveyed was of two post-communist countries, subject to neo-liberal influences, of which one (Poland) may have been clinging conservatively to past traditions.

From this interview-based study of contemporary discursive constructions of social rights, it may clearly be seen that there is no unanimity across Europe as to the understanding of social rights. What is more, variation of discourse and understanding *within* countries would appear to be as significant as variations *between* countries.



4. CONCLUSIONS: THE PROSPECTS FOR EUROPEAN SOCIAL CITIZENSHIP

It has been contended that the ‘social dimension’ of the EU is ‘near collapse’ and that we should take a ‘sober view’ of the potential of European Social Citizenship (Barbier, 2013: 105 and 108). The idea of European Citizenship has been primarily relevant only for those citizens who wish and are able to move between member states, while its influence upon the rights of settled citizens has been largely secondary. Our focus is on *social* rights of citizenship and most certainly, social rights are and will continue primarily to be legislated for and administered at national level. But if there is to be a European dimension to social citizenship it would have to be relevant not only to intra-Union migrants, but also to that vast majority of EU citizens who do not move about, but ‘stay at home’ (van Parijs, 2013).

THE ISSUES

Our evidence, based on historical case studies and contemporary key-informant interviews, points to two issues:

1. There are disjunctures between social rights discourse and social policy discourse. The two are not necessarily coterminous. Social policy may be framed without regard to the consideration of social rights, and yet social rights may be realised nevertheless. Conceptions of social rights as rights of citizenship, if they exist in the minds of policy actors, may vary, may be contradictory, or may be confused. Certainly the association between social rights and any idea of cosmopolitan, supra- or post-national citizenship is at best tenuous. The barriers to the defence and promotion of social citizenship in Europe lay not so much with prevailing inconsistencies in the *de facto* realisation of social rights, as with conceptual uncertainty and ideological diversity.
2. Clearly, it is not possible to legislate for ideological consensus, but inferences that may be drawn from the patterns disclosed by our evidence are consistent with suggestions that the hegemonic conception of citizenship across Europe is increasingly liberal/individualistic, rather than solidaristic, albeit that, in different shapes and forms, solidaristic convictions are shown to have survived in all but one of the European countries we have studied. A commitment to social rights and the welfare state became sustainable by virtue of a consensus stimulated by a social liberal impetus; at various times and in various ways by the liberalism of Thomas Paine, the Krausist movement, ordoliberalism³, F.D. Roosevelt, Hobhouse, Beveridge, etc., etc.; a liberalism that was, arguably, more tolerant of ideological pluralism than the prevailing economic neoliberal orthodoxy; a liberalism to which social conservatives and social democrats could accommodate. In so far as the EU continues to appeal to solidarity, its appeals of late have been to solidarity between nations in the face of economic crisis, not solidarity between citizens.

There are competing ideological justifications for social rights and rather than assume that the resulting diversity of conceptual interpretation may be elided through the sharing and promotion of administrative ‘best practice’ (as envisaged by the Open Method of Co-ordination, see e.g. Heidenreich & Zeitlin, 2009) the potential dynamism of that diversity could, perhaps, be recognised and embraced. This is something that requires debate beyond academia.

A POSTSCRIPT

³ A term first coined in the 1930s by the Freiburg School of economic thought, but more recently and more widely referred to as ‘Social Market liberalism’.



A recommendation already made in one of the reports associated with the Social Rights Work Package (WP6) of the bEUcitizen project (Bruzelius et al., 2015: 31) is that of an EU-wide minimum benefit for mobile jobseekers, but it is additionally suggested that ‘this could be subsequently expanded to all EU citizens in the form of an EU-wide Basic Income Guarantee, which might constitute a cornerstone of future EU citizenship’. The suggestion that Member States might be encouraged to co-operate in exploring the possibility of a Universal Basic Income (UBI) as a tool to improve their respective social security systems has already been the subject of a European Citizens’ Initiative. (NOTE: It should be noted that a Basic Income Guarantee is not necessarily the same as non-withdrawable UBI.) Specifically, however, the objective of the Initiative in 2013 was

to offer to each person in the EU the unconditional rights as an individual, to having his/her material needs met to ensure a life of dignity as stated by the EU treaties, and to empower participation in society supported by the introduction of the UBI. In the short term, initiatives such as “pilot studies” (Art 156 TFEU) and examination of different models of UBI (EP resolution 2010/2039(INI) should be promoted by the EU.

The initiative attracted some 285,000 signatures or ‘statements of support’ from EU citizens, though this failed by a considerable margin to pass the overall 1 million signature threshold required to secure its formal consideration. The numbers of signatures obtained in the eight countries participating in the study reported above are set out in Figure 7, which shows that in two of the eight countries (Estonia and the Netherlands) support exceeded the ECI’s national threshold, though support in other countries was lower (especially in the UK and Poland). These results have everything to do with the relative effectiveness or failure of campaigns by activists in the countries concerned, yet they demonstrate that the idea of a basic income, even with minimal publicity, is capable of attracting some level of popular support.

	Signatures	Quotum*	% of quotum
Estonia	4,884	4,500	109
Netherlands	20,337	19,500	104
Sweden	9,601	15,000	64
Spain	25,420	40,500	63
Germany	40,542	74,250	55
Denmark	3,200	9,750	33
UK	10,111	54,750	19
Poland	4,765	38,250	13

* The threshold set under ECI rules that must be exceeded by at least 7 countries

Source: <http://basicincome2013.eu/en/statistics.htm>

Figure 7: Support for European Citizens’ Initiative for an Unconditional Basic Income (2013)

More importantly, the concept of a basic income, or a Citizen’s Income, is well established and has been debated for many years (see especially van Parijs, 1992, 2014; Torry, 2013, 2015;). Versions of such a proposal



can be traced back to Thomas Paine (1791). By itself, the right to a Citizen's Income is not a universal 'silver bullet' solution to all social problems (though pilot studies suggest it can, in some circumstances, be remarkably effective), but as a policy proposal it provides a catalyst and a focus for the open negotiation of the basis of our social citizenship. It has been demonstrated that the idea of social insurance found support, albeit for different reasons, from across the ideological spectrum. The idea of a Citizen's Income might find support in a similar way.⁴ Depending on the design of a basic income or Citizen's Income scheme, it can foster individual independence *and* collective solidarity. A European Citizen's Income, payable to every EU citizen, would create a substantive social right attaching directly to EU citizenship. It would make a reality of European social citizenship.

The European Citizens' Initiative may on this occasion have failed, and it may well be that in the present climate an attempt to foster a more extensive exploration and debate would founder over the details by which a Citizen's Income could be jointly funded and delivered. Such a project may, however, stand a greater chance of succeeding than the idea of a pan-European social insurance scheme, such as that proposed by Pieters, (1989; and see Pieters & Vansteenkiste, 1993). The advantage of a European Citizen's Income is that it would be received by *every* citizen. At whatever level it is set, a European Citizen's Income could play a key role in cementing a shared European identity; it could facilitate freedom of movement; it could provide a common underpinning to national social security systems for all Europeans. It may be that a European Citizen's Income could be incrementally developed, starting at a modest, primarily symbolic, level. When a very modest universal carer's allowance was first introduced in the UK, there is evidence that recipients valued it not for its monetary value, but as a symbol of recognition of their contribution as carers and their status as citizens (McLaughlin, 1991).

Even if such a debate were to prove inconclusive at this time, it could serve to raise awareness of social rights and social citizenship as dynamic concepts, capable of understanding, negotiation and agreement from a variety of perspectives, and which may yet be realisable for the citizens of Europe as a whole.

⁴ See, for example, Torry, M. (forthcoming, 2016) *The Feasibility of Citizen's Income*, Basingstoke: Palgrave Macmillan (Chapter 8) for a detailed account of how Citizen's Income can be accommodated variously to contemporary social liberal (in the context of this report, a broadly neo-Rawlsian discursive framing), social democratic (broadly 'Global'), neo-conservative (broadly Hobbesian); and/or social conservative (broadly Rousseauian) ideologies.



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ANNEX I THE INTERVIEW SCHEDULE

Notes to interviewer:

- Please thank the interviewee for agreeing to take part and confirm the information and undertakings provided on the Consent Form.
- The schedule is short, but the questions are open and potentially complex. Interviewers are encouraged, where appropriate, to prompt the interviewees to expand where possible on their answers, but to allow them to pass on questions which are clearly beyond their area of expertise.

Questions:

1) The term 'social rights' (in its general sense) is contested and possibly (for some people) controversial. What do *you* understand by the term? Is the underlying concept familiar/ meaningful to you? Are you in favour of social rights and why (or why not)?

2) To what extent - if at all - would you say that [your country] **respects, promotes** and/or **fulfils** rights in relation to each of the following:

- (a) social assistance;
- (b) housing;
- (c) health care;
- (d) education?

If so, why does [your country] do this: what is the justification?

3) Insofar as of [your country's] people may **need** -

- (a) social assistance;
- (b) housing;
- (c) health care;
- (d) education;

does that give them rights? Does it give the state **responsibilities**?

4) Taking each of these in turn,

- (a) social assistance;
- (b) housing;
- (c) health care;
- (d) education;

which of [your country's] people have rights and on what basis? Would you say that they have rights because they are citizens or residents; because they are the users or customers of public services; because they are workers or the dependants of workers; because they are especially vulnerable (e.g. especially poor or sick or old); is it a combination of these criteria?