

WHAT FUTURE FOR THE EUROPEAN SOCIAL MODEL? THE RELEVANCE OF EARLY INTELLECTUAL CONCEPTS OF SOCIAL INTEGRATION

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Abstract: The classic account of European social integration starts with the near-exclusion of European social policy from the European Economic Community Treaty (1957). The final version of the Treaty reflected a consensus which relied on market forces for growth and wealth creation while social policy largely remained the preserve of the Member States. Although the EU's social policy competence has considerably widened since 1957 – under the umbrella of a European Social Model – there remains an asymmetry between European social and market integration. Tensions have become evident as economic (and monetary) integration has progressed, social diversity across the Member States has increased, and national welfare states have begun to be dismantled, leading to questions about the future role, shape and form of social Europe. This article draws on archival material and literature on the history of European integration to (re)introduce EU labour lawyers to the intellectual concepts of social integration developed during the *interbellum* (1918-1939) by Aristide Briand (at the time French Minister for Foreign Affairs) and Albert Thomas (Director of the International Labour Organisation (ILO)). The article revisits the classic account of European social integration and asks to what extent these early texts have any relevance for contemporary EU labour lawyers thinking about the future of social Europe.

Keywords: European Social Model, Aristide Briand, Albert Thomas, EEC, ECSC, ILO, history of European integration

I. Introduction

The classic account of European social integration starts with the near-exclusion of European social policy from the founding Treaty of the European Economic Community (EEC) (1957). EEC competence was limited to the free movement of workers, equal pay and cooperation in the area of social security.¹ The final version of the Treaty reflected a consensus which relied

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¹ See Articles 117–28 EEC Treaty.

on market forces for growth and wealth creation while social policy largely remained the preserve of the Member States.

Although the EU's social policy competence, and with that the number of EU-derived social policy norms, has increased since 1957 there remains an asymmetry between European social and market integration. The concept of "social Europe" or a "European Social Model" is associated primarily with the period between 1972 and 1994, beginning with the adoption of the first Social Action Programme and, more explicitly, when Jacques Delors, as President of the European Commission, advocated the development of socially oriented instruments (laws and redistributive policies) to accompany the creation of the internal market.² The 1990s witnessed the adoption of a number of directives regulating working conditions in the single market albeit these contain only a patchwork of laws with some core institutions of labour market regulation excluded from EU competence.³ The turn of the century resulted in a change in approach by the European Commission: soft forms of coordination and new instruments of governance, such as the open method of coordination (OMC), have become the preferred method to foster policy convergence. Despite the adoption of the Charter of Fundamental Rights in 2000, and its later embedding in EU law through the Lisbon Treaty, the preference for new governance mechanisms in the social policy sphere intensified with the launch of the Lisbon Strategy in 2000, and its successor, Europe 2020.⁴

At its heart, the European Social Model suffers from an equivocal purpose within the EU's framework. Article 3 Treaty on the European Union (TEU) commits the EU to establishing "a highly competitive social market economy, aiming at full employment and social progress" and "combat[ing] social exclusion and discrimination, and [...] promot[ing] social justice and protection, equality between women and men, solidarity between generations [and among Member States]." In its White Paper on Social Policy, the European Commission listed the values underpinning the European Social Model as "democracy and individual rights, free collective bargaining, the market economy, equality of opportunity for all and social welfare and solidarity."⁵ The secondary literature lacks a uniform definition of the model's content and

² See Jeff Kenner, *EU Employment Law* (Hart 2002), chapter 3 and Laurent Warloutzet, *Governing Europe in a Globalizing World* (Routledge 2018).

³ See further Kenner *ibid*.

⁴ European Council, *Presidency Conclusions – Lisbon European Council* Brussels: European Council, 2000 and European Commission, 'Europe 2020: A strategy for smart, sustainable and inclusive growth' COM(2010) 2020.

⁵ COM (94) 333 final, 27 July 1994, para. 3.

scope.⁶ The European Social Model must be considered as a flexible notion ranging from a narrow definition of employment law to encompassing broader issues surrounding the creation of the welfare state.⁷ It is “a political project of highly normative ambiguity” which is a “key factor in legitimising European institutions”⁸ and seeks to act as a counterweight to the economic dimension of European integration. However, it is marked by a “constitutional asymmetry between policies promoting market efficiencies and policies promoting social protection and equality.”⁹

Underlying tensions between economic policy and social integration rose to the surface in the wake of the 2008 banking, and subsequent Eurozone, crisis. In its response to the crisis, the EU institutions had pushed for lower levels of social assistance, employment protection and the reduction or freezing of wages across a number of Member States.¹⁰ Rather than acting as a corrective to market integration, the European social dimension was incorporated into the logic of a market-driven process of European integration.¹¹ The consequence is that, for many citizens, the EU has come to be seen:

as a machine for divergence, inequalities, and social injustice. A project associated for decades with convergence, prosperity, and progress is now being blamed for downgrading of welfare systems and seen as a threat to people’s well-being.¹²

In response, the last few years have seen a proliferation of (largely unrealised) reform proposals from EU labour law scholars, social actors, and governments which aim to reinvigorate social

⁶ Amandine Crespy and Georg Menz, ‘Introduction: The Pursuit of Social Europe in the Face of Crisis’ in Amandine Crespy and Georg Menz, *Social Policy and the Eurocrisis: Quo Vadis Social Europe?* (Palgrave 2015), chapter 1.

⁷ See Wolfgang Streeck, ‘From Market-Making to State Building? Reflection on the Political Economy of European Social Policy’ in Stephan Leibfried and Paul Pierson (eds), *European Social Policy: Between Fragmentation and Integration* (The Brookings Institution 1995) and Gráinne de Búrca, ‘Towards European Welfare’ in Gráinne de Búrca (ed), *EU Law and the Welfare State: In Search of Solidarity* (OUP 2005).

⁸ A Serrano Pascual and M Jepsen (eds), *Unwrapping the European Social Model* (Policy Press 2006) 19, 25.

⁹ FW Scharpf, ‘The European Social Model: Coping with the Challenges of Diversity’ (2002) 40 *JCMS* 645, 645.

¹⁰ This took place through either the European Semester framework for macroeconomic governance (instituted as part of the Europe 2020 Strategy) or, in the case of Eurozone states receiving financial assistance from the Troika of IMF, European Commission and the European Central Bank, through direct intervention. See Paul Copeland, *Governance and the European Social Dimension: Politics, Power and the Social Deficit in a post-2010 EU* (Routledge 2020), chapter 1.

¹¹ *Ibid.*

¹² Sacha Garben, ‘The European Pillar of Social Rights: An Assessment of its Meaning and Significance’ (2019) 21 *Cambridge Yearbook of European Legal Studies* 101, 125.

Europe.¹³ In 2017, the European Commission took action by launching a (non-legally binding) European Pillar of Social Rights.¹⁴ The Pillar has been given a cautious welcome by scholars as indicating a renewed focus on the social dimension of the EU although whether it will result in a recalibration of the constitutional imbalance between social rights and economic freedoms within the EU's legal order remains to be seen.¹⁵

Contributing to this special issue provides an opportunity to open up the debate amongst EU labour lawyers on the future of social Europe to insights from other disciplines.¹⁶ To that end, this article draws on archival material and literature on the history of European integration to (re)introduce EU labour lawyers to the intellectual concepts of social integration developed during the *interbellum* (1918-1939) by Aristide Briand (at the time French Minister for Foreign Affairs) and Albert Thomas (Director of the International Labour Organisation (ILO)).¹⁷ Their vision for European integration, although influential in post-war ambitions for European integration, did not survive the political compromises necessary to agree the EEC Treaty, and has largely disappeared from legal scholars' consciousness. For lawyers, the opening up of their discipline to the findings of historians of European integration, allows a more empirically informed and a theoretically sounder understanding of the history and nature of EU law; thereby providing new inspiration for the current legal debate on the place of labour law and social policies in European integration.¹⁸ By focussing on the historical and political contexts which shaped early attempts at European integration, this article revisits the classic account of European social integration as beginning with its exclusion from the EEC Treaty. It begins the process of asking to what extent these early texts have any relevance for contemporary EU labour lawyers thinking about the future of social Europe.¹⁹

¹³ For a summary of recent labour law proposals and their evaluation see Manfred Weiss, "The need for more comprehensive EU social minimum standards" in Reinhard Singer and Tania Bazzani, *European Employment Policies: Current Challenges* (Berliner Wissenschafts-Verlag 2017).

¹⁴ COM(2016) 127 final.

¹⁵ Teun Jaspers, Frans Pennings and Saskia Peters (eds), *European Labour Law* (Intersentia 2019), 11.

¹⁶ See Elaine Fahey's Introduction to this Special Issue.

¹⁷ *Memorandum sur l'Organisation d'un Régime d'Union Fédérale Européenne*, Series of League of Nations Publications, VII. Political, 1930, II. 4 and *Memorandum from the ILO on questions of special interest to European states*.

¹⁸ See Peter L. Lindseth, 'The Critical Promise of the New History of European Law' (2012) 21(3) *Contemporary European History* 457.

¹⁹ Other scholars have pursued projects on, for example, the history of the negotiations of the Treaties of Rome and their relevance for contemporary EU lawyers. See the Research Project on 'The Treaties of Rome as *travaux préparatoires*' at the Max Planck Institute for European Legal History: <https://www.rg.mpg.de/research-project/the-treaties-of-rome-as-travaux-preparatoires?c=1830285>.

The article proceeds as follows. Section one revisits the plans put forward by Aristide Briand and Albert Thomas which are characterised by three themes: solidarity; its creation through trans-European projects; and the extent to which states should limit sovereignty. Section two traces the plans' influences into the post-war period and their eventual disappearance from the negotiating agenda and legal scholars' consciousness. Section three tracks the recurring debates on social integration since 1957 and tentatively draws lessons from the past for those thinking about the future of social Europe.

II. Early Attempts at Social Integration

A. *Briand's Memorandum on the Organisation of a Regime of European Federal Union*

The *interbellum* was a transitional moment for the thinking about "Europe" when the imagined community of European states was coming into being.²⁰ The signing of the Locarno Treaty in 1925 marked the beginning of a period of optimism about the potential for institutional cooperation between European states in order to guarantee peace, democracy and social stability on the continent. Trade unionists, politicians and intellectuals promoted European unity in their writings.²¹ This period of optimism waned following the onset of the Great Depression in 1929 and attempts at European unity definitively came to an end in 1936 with the final abandonment of the Gold Standard, the remilitarisation of the Rhineland and the Spanish civil war.²² Nonetheless, the proposals put forward during the 1920s and early 1930s are inspirational in terms of the type of European integration that could be achieved if states were genuinely interested in pursuing it.

This becomes most obvious in relation to Aristide Briand's plan for a Federal European Union – the first government-backed proposal for a European Union – which met with unanimous support from European leaders when it was first announced. Briand, the French Minister for

²⁰ See Anne-Isabelle Richard-Picchi, *Colonialism and the European Movement in France and the Netherlands, 1925-1936*, PhD Thesis 30 September 2010, 22.

²¹ Éric Bussière and Michel Dumoulin, "L'émergence de l'idée d'identité européenne d'un après-guerre à l'autre" in René Girault (ed), *Identité et conscience européenne au XXe siècle* (Hachette 1994). On French initiatives, in particular, see Jean-Michel Guieu, *Le Rameau et le glaive. Les militants français pour la Société des Nations* (Presses de Sciences Po 2008).

²² See Zara Steiner, *The lights that failed. European international history 1919-1933* (OUP 2005).

Foreign Affairs, proposed the creation of “some sort of [European] federal link” in his speech to the League of Nations on 5 September 1929:

Among peoples grouped geographically like the people of Europe there should exist a sort of federal bond; such peoples should at all times be able to get into touch, discuss their interests, take joint resolutions, and establish among themselves a bond of solidarity which would enable them, if need be, to meet any grave emergency that might arise.²³

For Briand, economic co-operation alone – as proposed by the League of Nations – was not sufficient to resolve the underlying and inevitable tensions that would arise between European states. These tensions could only be resolved through closer political and social cooperation between Europeans.²⁴ Briand recognised the novelty of his proposals when he admitted that “the most important and wise [acts of man] always contains an element of madness or temerity.”²⁵ At a conference of leaders of the European delegations, summoned by Briand on 9 September 1929, delegates agreed to see that their respective governments gave study to the “United States of Europe” project, with a view to the possibility of more concrete action at the 1930 Assembly. Briand thus prepared an ad interim report – the *Memorandum on the Organisation of a Regime of European Federal Union* – which was published on 17 May 1930.²⁶

The Memorandum placed the proposed European Federal Union within the framework of the League of Nations. It saw the purpose of the European organisation to create a “permanent union of solidarity” and to co-ordinate European interests so that European states could represent their views more effectively, with one voice, within the framework of the League.²⁷ The Union’s structure was based on “the idea of union and not of unity – that is to say, a

²³ League of Nations, *Journal of the Tenth Assembly* (Geneva 1929) no. 4, Thursday September 5th 1929, 53.

²⁴ Ibid, 51-55. On the French ambitions underpinning Briand’s plan, see Joseph Bohling, ‘Colonial or Continental Power? The Debate over Economic Expansion in Interwar France, 1925-1932’ (2017) 26(2) *Contemporary European History* 2017.

²⁵ League of Nations (n 23), 51-2: “Mais je pense que, dans tous les actes de l’homme, voire les plus importants et les plus sages, il y a toujours quelque grain de folie ou de témérité.”

²⁶ Memorandum (n 17). The Memorandum was primarily drafted by Alexis Léger, political director of the French Foreign Ministry. See Renaud Meltz, *Alexis Léger, dit Saint-John Perse* (Flammarion, 2008), 314. On the Memorandum and on Briand see Antoine Fleury and Lubor Jilek (eds), *Le Plan Briand d’Union fédérale européenne: Perspectives nationales et transnationales avec documents* (Peter Lang 1998); Jacques Bariéty (ed), *Aristide Briand, la Société des Nations et l’Europe 1919-1932* (Presses universitaires de Strasbourg 2007); Sylvain Schirmann, *Quel ordre européen ? De Versailles à la chute du III^e Reich* (A. Colin, 2006); and Gérard Boussuat, *Histoire de l’Union européenne, fondations, élargissements, avenir*, (Berlin Education, 2009).

²⁷ Memorandum (n 17), 10. See also Sylvain Schirmann (ed.), *Organisations internationales et architectures européennes 1929-1939* (Metz, 2003).

federation elastic enough to respect the independence and national sovereignty of each State while guaranteeing to all the benefits of collective solidarity.”²⁸ Briand did not foresee any limits on state sovereignty; economic objectives – principally the establishment of a common market – would be pursued through political cooperation.²⁹

The European Federal Union was thus to achieve a number of inter-related goals: trade liberalisation would lead to a rise in living standards creating solidarity amongst European peoples. “Solidarity” was understood in terms of a moral community whereby Europeans recognise the innate inter-connectedness of their situation and are able to trust that one state will act in the interests of all states, to be able to speak with one voice in times of crisis, and to reap the benefits of co-operation. A European Federal Union needed to make sure that there was not only trust and confidence between the peoples of Europe but also that living standards would rise to their highest possible levels across all states to ensure human well-being. Importantly, Briand recognised that this “moral community” may come about organically but, realistically, would need to be actively created not through normative aspirations but through concrete action. Thus, resources should be pooled; intellectual and artistic cooperation would be encouraged; there would be additional co-operation in public works, communications and travel; loans for less developed regions; and regulation of social consequences of free movement of people.³⁰

Responses to the Memorandum varied. Legal scholars were divided, influenced in part by their national origins and their respective countries’ interests, but overall they were cautious about the extent to which law and legal institutions could create a European union.³¹ Georges Scelle and Boris Mirkin-Guetzevitch opined that:

[A]ny specific plan for European organisation is all the more fanciful or unreal when it is more detailed. [...] most of the time these schemes first develop in political reality, in facts, and only then do jurists construct their doctrines.³²

In the same volume, Scelle and Mirkin-Guetzevitch also considered the Memorandum legally imprecise, even contradictory, in the sense that it left state sovereignty untouched: “the

²⁸ Memorandum (n 17), 12.

²⁹ Ibid.

³⁰ Ibid, 13.

³¹ See further Jean-Michel Guieu, ‘The Debate about a European Institutional Order among International Legal Scholars in the 1920s and its Legacy’ (2012) 21(3) *Contemporary European History* 319.

³² Boris Mirkin-Guetzevitch and Georges Scelle, *L’Union européenne* (Librairie Delagrave, 1931), 9 and 26.

conciliation between the idea of absolute sovereignty and the idea of federation or confederation is a logical and juridical impossibility.”³³

Government replies, which were assembled by the French Foreign Office and presented in a report to the eleventh Assembly of the League of Nations in September 1930 (held following the onset of the Great Depression), were also muted.³⁴ While other European states did not reject the idea of creating some sort of European union *per se*, particularly given the difficult economic situation, they were critical of the Memorandum in relation to: state sovereignty which states were generally not willing to limit; the fear that the Union would harm the authority of the League; whether economic or political cooperation should have priority; the geographic scope of the Union (particularly whether Russia and/or Turkey should be involved); and the relationship of the Union to other continents, particularly European colonies.³⁵ The muted response from other governments and the deteriorating economic and political situation in Europe meant that the Memorandum was not further discussed by the League of Nations as a whole, but was assigned to a new committee within the League’s framework, the Commission of Inquiry for European Union.³⁶ Under Briand’s chairmanship and in the context of the Great Depression, the Commission held six meetings between September 1930 and October 1931. At its third session, the Commission established a number of sub-committees dealing with inter alia agriculture, unemployment and the economic crisis which went on to work out plans for agricultural surpluses, unemployment, public works, and an International Agricultural Mortgage Credit Company.³⁷ International events of the 1930s – the Great Depression, rising nationalism across a number of European states, and the League of Nations’ (and its member states’) failure to deliver disarmament and collective security – meant that none of these plans were implemented, and the committees stopped convening after Briand’s death in 1932.³⁸

B. The ILO’s Memorandum on questions of special interest to European states

³³ Ibid, 28. See also Georges Scelle, ‘Essai relative à l’Union européenne’ (1931) *Revue générale de droit international public*.

³⁴ League of Nations Document A46. 1930. VII, Documents relating to the organisation of European Federal Union, Report on the results of the enquiry in connection with the organisation of European Federal Union, 71.

³⁵ See further Guieu (n 21), chapter 6.

³⁶ Resolution of the Assembly of the League of Nations, Eleventh Session of the League of Nations, 17th September 1930.

³⁷ Minutes of the Third Session of the Commission of Enquiry for European Union Held at Geneva from May 15th to 21st, 1931, Series of League of Nations Publications, VII. Political, 1931. 7.

³⁸ See generally Anthony Adamthwaite, “‘A Low Dishonest Decade?’: War and Peace in the 1930s’ in Nicholas Doumanis, *The Oxford Handbook of European History 1914-1945* (OUP 2016).

At its second session, in January 1931, the Commission of Inquiry for the European Union received a *Memorandum from the ILO on questions of special interest to European states*.³⁹ The ILO Memorandum considered a number of “labour questions” particular to Europe which could undermine economic co-operation if left unresolved, principally the conditions of workers in industries which were either vital to the European economy (coal) or which crossed European borders (river shipping and railways), and recommended the adoption of ILO conventions (to be applied initially within Europe) to set standards for these industries. Other areas of concern raised in the ILO’s Memorandum include the free movement of labour, unemployment and agriculture. The free circulation of labour was considered essential to the realisation of “a real Union, or even an economic Union”⁴⁰. However, its success could not be left to “chance impulses or interests of individuals or even nations. It must be regulated, and, indeed, systematically organised”⁴¹ so as to ensure that labour standards were upheld and labour rights of migrants were properly enforced in their host countries. Any questions related to labour conditions should be settled by the ILO which could “establish less universal rules” with “a geographical specialisation”⁴², bearing in mind the “closer solidarity existing between European States.”⁴³

The ILO’s Memorandum accepted the premise that in the long-term, trade liberalisation would raise living standards which would in turn create social stability and solidarity amongst states. A precondition of European integration, though, was acceptance by its citizens. The author of the Memorandum – the ILO’s director, Albert Thomas – was a French socialist who had been Minister of Armaments and War Production during World War One. As Lorenzo Mechi explains, “the wartime economy had allowed him to see the advantages of closer collaboration among the social classes and of rationalisation and productivity increases for promoting growth and prosperity in peacetime.”⁴⁴ Thomas had advocated the harmonisation of European labour laws in the field of working time since 1919 and had been interested in the pursuit of European

³⁹ Commission of Enquiry for European Union, Minutes of the Second Session of the Commission, held at Geneva from January 16th to 21st, 1931, Annex 2.

⁴⁰ *Ibid*, 75.

⁴¹ *Ibid*, 75-6.

⁴² *Ibid*, 77.

⁴³ *Ibid*, 76.

⁴⁴ Lorenzo Mechi, ‘Managing the Labour Market in an Open Economy: From the International Labour Organisation to the European Communities’ (2018) 27(2) *Contemporary European History* 221, 225.

unity, albeit within the framework of the League of Nations, since 1925.⁴⁵ He was aware that differences in labour and living standards between European countries would undermine solidarity.⁴⁶ The key driving force behind his proposals was not ideological in the sense of pursuing a vision of European unity, but the practical conviction that *future prosperity and peace* on the continent depended on European states giving up parts of their sovereignty and cooperating. He was convinced that “if there is the constant respect for national sovereignties, no League of Nations is possible, no Organization is possible.”⁴⁷ However, cooperation would only be possible if European citizens became enthusiastic supporters of European unity; this was to be achieved through concrete transnational works and projects which would increase cooperation and mutual dependence.⁴⁸ In essence, therefore, the ILO’s Memorandum provided the practical plan which would create solidarity: large-scale, cross-border public works which would not only tackle the main issue of the day – large-scale unemployment – but, in the longer term, would encourage European integration and European society building.

III. Developments after 1945

Briand and Thomas’ plans for a European Federal Union have largely disappeared from legal scholars’ consciousness yet their ideas were initially influential in post-war ambitions for European integration. In his 1950 declaration leading to the establishment of the European Coal and Steel Community (ECSC) – the EEC’s predecessor – Robert Schuman made an allusion to Briand in order to demonstrate the long lineage of “France’s noble [aim]” to secure European peace and security.⁴⁹ Similarities in thinking are also evident. For Schuman, transnational economic co-operation had to be assured as European states are “united in a “common destiny”” and “one cannot be pleased at the economic failures of one’s neighbour.”⁵⁰ In order to maintain peace in Europe, European states therefore had to create a “de facto solidarity” among their peoples which could only be achieved through concrete actions. This “entails the

⁴⁵ See generally Denis Guérin, *Albert Thomas au BIT, 1920–1932. De l’internationalisme à l’Europe* (Euryopa 1996).

⁴⁶ *Ibid.*, 75.

⁴⁷ *Ibid.*, 91.

⁴⁸ *Ibid.*, 72 citing Lettre à Raoul Richard, fin mai 1931, AN 94 AP 392: “Je crois vraiment qu’on ne pourra faire une Europe que si on fait travailler tous les pays qui la composent à un certain nombre de projets d’intérêts communs, que si on multiplie les moyens d’échanges et de communication, de circulation des hommes et des choses.”

⁴⁹ Fabrice Larat, ‘Present-ing the Past: Political Narratives on European History and the Justification of European Integration’ (2005) 6(2) *German Law Journal* 273, 280.

⁵⁰ J. Peter Burgess, ‘Coal, Steel and Spirit. The Double Reading of European Unity (1948-1951)’ in Bo Stråth, *Europe and the Other and Europe as the Other* (Peter Lang 2000), 436.

refusal of national selfishness and theoretically implies the fusion of interests in the long term.”⁵¹ The resulting pooling of German and French iron and steel in the ECSC combined both Thomas’s enthusiasm for large-scale, cross-border projects (“solidarity in production”⁵²) and Briand’s vision for European union (“the leaven from which may grow a wider and deeper community between countries long opposed to one another by sanguinary divisions”⁵³).

The recognition that solidarity was essential *and* had to be actively created was enshrined in the Preamble of the Treaty of Paris establishing the ECSC.⁵⁴ Other influences from the inter-war years are also apparent. In 1953, the ECSC and the ILO signed a co-operation agreement which regulated mutual consultation between the two bodies and formally committed the ILO to provide technical assistance to the Community.⁵⁵ ILO personnel made a major contribution to drafting concrete regulations for the ECSC on free movement of workers and providing technical assistance on vocational training and the recognition of professional qualifications. Although there are no explicit references, many of the outcomes of collaboration between the ILO and the ECSC concretely implemented proposals made by the ILO in its 1931 Memorandum to ease negative effects of the creation of a common market.⁵⁶ For example, an adaptation fund was created to facilitate the re-entry of workers into the labour market which provided for retraining and, if needed, re-location of unemployed workers.

The question of a social dimension also permeated the discussions on the future shape and form of European integration which occurred in 1952-3 and which resulted in proposals on a European Political Community (EPC) and a European Defence Community (EDC).⁵⁷ European trade unions increasingly advocated European integration to be coupled with social integration; specifically the harmonisation of social conditions in European countries, so as to reduce the impact of trade liberalisation on the competitiveness of national production systems. Harmonisation in this context was to be understood as “working ‘upwards’ – that is, based on

⁵¹ Larat (n 49), 288.

⁵² The Schuman declaration, 9 May 1950 available at https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en.

⁵³ *Ibid.*

⁵⁴ The Preamble states that “[I]’Europe ne se construira par les réalisations concrètes créant d’abord une solidarité de fait.”

⁵⁵ ILO, *Minutes of the 122th session of the Governing Body*, Geneva, May–June 1953, 96.

⁵⁶ Lorenzo Mechi, ‘Economic Regionalism and Social Stabilisation: the International Labour Organization and Western Europe in the Early Post-War Years’ (2013) 35(4) *International History Review* 844, 852.

⁵⁷ For the background to the EPC, see Richard T Griffiths, *Europe’s First Constitution* (Federal Trust 2001).

a general adjustment to the wage and social standards of the most-advanced countries.”⁵⁸ However, following the French rejection of the EDC Treaty and the subsequent abandonment of the EPC Treaty (the EDC’s institutional corollary) in 1954, the European socialist movement distanced itself from the integration debates.⁵⁹ The Benelux countries also considered some form of social harmonisation to be necessary for successful trade liberalisation.⁶⁰ The most vocal proponent, however, was the French government who argued that trade liberalisation should be accompanied by harmonisation of certain working regulations.⁶¹ Fears over France’s competitive disadvantage led the government “to try to ‘Europeanise’ the problem, raising it in all the bodies of multilateral cooperation and often subordinating to its solution its own commitment to economic integration.”⁶²

At the Messina conference in early June 1955, France demanded the ratification by all Member States of the ILO Convention on equal pay and the adoption of uniform rules on overtime pay and the harmonisation of paid holiday schemes.⁶³ Lise Rye identifies three main reasons for France’s pursuit of social integration: to secure time, protection and approval.⁶⁴ France needed to gain more time to clarify its own position on European integration and therefore chose topics for discussion that it knew would divide the other states.⁶⁵ French public opinion was also opposed to membership of the common market as long as it was perceived to threaten French industry. Thus, in order to protect French industry from competitive disadvantage, and to

⁵⁸ Lorenzo Mechi, ‘A prediction for economic integration? European debates on social harmonisation in the 1950s and 1960s’ in Lucia Coppolaro and Lorenzo Mechi, *Free Trade and Social Welfare in Europe* (Routledge 2020). See also Brian Shaev, ‘Liberalising Regional Trade: Socialists and European Economic Integration’ (2018) 27(2) *Contemporary European History* 258 and Patrick Pasture, ‘The Interwar Origins of International Labour’s European Commitment’ (2001) 10(2) *Contemporary European History* 221.

⁵⁹ See Richard T Griffiths, ‘European Utopia or Capitalist Trap? The Socialist International and the Question of Europe’ in Richard T Griffiths, *Socialist Parties and the Question of Europe in the 1950s* (Brill 1993), 21.

⁶⁰ See further Richard T Griffiths, ‘The Beyen Plan and the European Political Community’ *EUI Working Papers* 1985/199.

⁶¹ On the inter-war influences in the French position on European integration see Bohling (n 24).

⁶² Mechi (n 58), 71.

⁶³ On 1-3 June 1955, the Foreign Ministers of the six Member States of the ECSC met in Messina to discuss the revival of the European integration process after the failed EDC and EPC Treaties. For the French position see Lise Rye Svartvatn, ‘In Quest of Time, Protection and Approval: France and the Claims for Social Harmonization in the European Economic Community, 1955-56’ (2002) 8(1) *Journal of European Integration History* 85.

⁶⁴ Rye *ibid*, 85. See also Alan S Milward, *The European Rescue of the Nation State* (2nd edn, Routledge 2000), 212; Hanns Jürgen Küsters, *Die Gründung der europäischen Wirtschaftsgemeinschaft* (Nomos 1982), 376. Note that this explanation is at odds with the contemporary justification of the French government that harmonisation of working regulations was necessary to compensate for the country’s advanced social legislation. See Paul Pitman, ‘Un Général qui s’appelle Eisenhower: Atlantic Crisis and the Origins of the EEC’ (2000) 6(2) *Journal of European Integration History* 37, 44.

⁶⁵ Rye (n 63), 89.

secure parliamentary and public approval for accession, some form of social protective measures were deemed a necessity.⁶⁶

The Intergovernmental Committee set up by the Messina conference to study the future shape and form of European integration, in its report (the Spaak Report, published in April 1956) negated the need for social harmonisation. Spaak, the Committee's chairman, "was determined to avoid [...] the many controversial and political issues that arguably led to the downfall of the EDC and EPC treaties."⁶⁷ Social integration was identified as one of those issues and the Spaak Committee had therefore tasked the ILO with investigating the feasibility of the subject.⁶⁸ The resulting Ohlin Report denied the need for social harmonisation and recommended the now well-known general exclusion of social policy from the EEC Treaty on the basis that:

So long as we confine our attention to international differences in the general level of costs per unit of labour time, we do not consider it necessary or practicable that special measures to "harmonise" social policies or social conditions should precede or accompany measures to promote greater freedom of international trade.⁶⁹

It was assumed that closer economic co-operation would lead to "more rapid growth of productivity [...] This would be amply sufficient [...], when account is taken of the strength of the trade union movement and of the sympathy of European governments for social aspirations, to ensure that labour conditions would improve and not deteriorate."⁷⁰

Notwithstanding the conclusions of the Spaak/Ohlin Reports, the French government increased its claims for harmonisation of certain working regulations – the realisation of equal pay within two years; the harmonisation of the length of the working week, overtime pay and paid holidays; and the progressive harmonisation of total wage charges – during the inter-governmental negotiations on European integration which started in June 1956. The French position "met vivid opposition [...] particularly [...] the claim for the harmonisation of total wage charges" and led to a deadlock in the negotiations.⁷¹ A solution was only reached when the German chancellor, Konrad Adenauer, and the French Prime Minister, Guy Mollet, met on

⁶⁶ Ibid.

⁶⁷ Gráinne De Búrca, 'The Road Not Taken: The European Union as a Global Human Rights Actor' (2011) 105 AJIL 649, 664-5.

⁶⁸ See Mechi (n 44).

⁶⁹ ILO, *Social Aspects of European Collaboration (Ohlin Report)* (ILO Studies and Reports, 1956), 40-41.

⁷⁰ Ibid, para 210.

⁷¹ Rye (n 63), 100.

6 November 1956 in Paris.⁷² There was agreement to insert safeguard clauses in relation to equal pay, and the issue of paid holidays was considered unproblematic; both countries agreed not to make the 40-hour working week obligatory. They also agreed to various safeguard mechanisms in relation to taxes, subsidies and working time, and, most importantly, on a general formula on social harmonisation saying that this would come as a consequence of the common market⁷³; the parallels to the Ohlin Report are undeniable. As Rye explains, “[w]hile France had undoubtedly obtained less than she had asked for, what she obtained was what she needed.”⁷⁴ The final version of the EEC Treaty effectively adopted the Ohlin Report’s underlying philosophy, with its reliance on market forces for growth and wealth creation and a functional social dimension⁷⁵ which was to achieve organic harmonisation with a view to upward, improved living and working conditions through limited regulatory activities at EU level to remedy distortions of competition.⁷⁶

IV The Recurring Theme of Social Integration

Despite its formal exclusion from the EEC Treaty, social integration has come onto the agenda whenever the EU’s legitimacy, and therefore the integration project, was under threat.⁷⁷ The first attempt at changing the EEC’s functional approach to social policy can be traced to the Declaration of Heads of State or Government after the Paris Summit of October 1972.⁷⁸ The political upheavals of the 1960s, particularly in France and Germany, and the economic fallout from the twin oil shocks in the 1970s, convinced political leaders that:

⁷² Ibid, 101.

⁷³ Ibid.

⁷⁴ Ibid, 102.

⁷⁵ Contained in articles 117-120 EEC (now in Title X TFEU on Social Policy)) and a Protocol allowing France to take protective measures if the working hours in other Member States were not reduced to the French level.

⁷⁶ Spiros Simitis and Antoine Lyon-Caen, ‘Community Labour Law: A Critical Introduction to its History’ in Paul Davies et al, *European Community Labour Law: Principles and Perspectives* (Clarendon Press 1997).

⁷⁷ This has been well-documented in the literature. See generally Brian Bercusson, *European Labour Law* (CUP 2009); Kenner (n 2); Catherine Barnard, *EU Employment Law* (4th edn, OUP 2012).

⁷⁸ *Statement from the Paris Summit*, Bulletin of the European Communities, October 1972, No. 10, 14–26. See further Aurélie Andry, *Social Europe in the long 1970s. The Story of a Defeat* (Florence: PhD, European University Institute, 2017), chapters 1 and 2; and Sylvain Schirmann, ‘Willy Brandt und die Anfänge des “sozialen Europas” (1969–74)’ in Andreas Wilkens (ed), *Wir sind auf dem richtigen Weg. Willy Brandt und die europäische Einigung* (Dietz, 2010).

[t]he Community has to be seen to be more than a device to enable capitalists to exploit the common market; otherwise it might not be possible to persuade the peoples of the Community to accept the disciplines of the market.⁷⁹

The result was the adoption of an ambitious Social Action Programme (1974).⁸⁰ Yet the Treaty provisions on social policy remained unchanged and unanimity was required to adopt most social policy instruments. A downward economic cycle as well as domestic political pressures meant that the programme's aims were largely unrealised.⁸¹

In theory, most European governments supported the introduction of social policies at the EEC level between 1973 and 1986 to tackle the unwelcome consequences of trade liberalisation. However, domestic political developments in different Member States at different times meant that no major breakthrough was possible, particularly after the election of the British Prime Minister Margaret Thatcher in 1979.⁸² Momentum only started to build after the introduction of qualified majority voting in the Single European Act (SEA) (1986) for legislation linked to the single market, including health and safety laws. This enabled the adoption of a number of legislative measures on working time, pregnant workers and young workers.⁸³ The SEA also introduced a general provision on the social dialogue⁸⁴ which aimed at concluding Europe-wide agreements between the social partners, and a chapter on structural funds to offset regional inequalities, including the European Social Fund.⁸⁵ The SEA's social ambitions were otherwise limited prompting concern that the "ambitious Single Market programme would not succeed unless it had the support of the Union citizens."⁸⁶ This led Jacques Delors, President of the EC Commission from 1985-1995, to link expanding the EC's competence in social policy to the objectives of realising an internal market by 1992.⁸⁷ Delors recognised that social

⁷⁹ Michael Shanks, 'The Social Policy of the European Communities' (1977) 14(4) *Common Market Law Review* 375, 377. See also Kenner (n 2), chapter 2.

⁸⁰ OJ C 13, 12.2.1974, 1-4.

⁸¹ See further Kenner (n2), chapter 2.

⁸² Lorent Warloutet, 'Creating a social Europe or completing the Single Market? Debates within the European Economic Community (1973-86)' in Lucia Coppolaro and Lorenzo Mechi, *Free Trade and Social Welfare in Europe* (Routledge 2020). See also Andrew Moravcsik, *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht* (UCL Press 1999), chapter V.

⁸³ See Barnard (n 77), chapter 1. On the history of the SEA see Piers Ludlow, 'From Deadlock to Dynamism. The European Community in the 1980s' in Desmond Dinan, *Origins and Evolution of the European Union* (OUP 2006).

⁸⁴ Article 118b EEC Treaty/article 155 TFEU.

⁸⁵ Article 130a EEC Treaty/article 174 TFEU. See Barnard (n 78), chapter 1 for more details. Mechi (n 56), 852 traces a link to the ECSC's adaptation fund and, by extension, Thomas's earlier ideas in the ILO Memorandum.

⁸⁶ Barnard (n 77), 11.

⁸⁷ *Bulletin of the EC* (1986), 12. On the Delors era see Ken Endo, *The Presidency of the European Commission under Jacques Delors: The Politics of Shared Leadership* (Macmillan 1999); George Ross, *Jacques Delors and*

and economic integration were not divisible. The principle vehicle for achieving a European social area was the social dialogue which formally involved the social partners in a complex process of law-making.⁸⁸ It led to the adoption of the (non-legally binding) Community Charter of Fundamental Social Rights of Workers (1989), to be implemented through a Social Action Programme, and the Protocol and Agreement on Social Policy of the Treaty on European Union.⁸⁹ As a result of British opposition, the Agreement could not be inserted into the Maastricht Treaty but was given legal effect among the eleven member-states that agreed to it.⁹⁰ It significantly expanded the legal competences of the EC in the field of social policy and increased the areas in which measures could be adopted by qualified majority voting.⁹¹ In addition, the Agreement changed the role of the social partners: henceforth, the Commission was to consult the social partners before taking action in the social policy field and to involve the partners in the content of the proposal. It also allowed for the social partners to negotiate a proposal which, if agreement were to be reached, could be given *erga omnes* effects by a Council decision.⁹² The Maastricht Treaty thus marked a turning point from an economic community to a more open project of political and constitutional integration.⁹³ It sought to rebalance the asymmetry between the economic and social dimension of the European Community (EC). Academic commentaries at the time were optimistic about the future development of labour law at EC level and considered the formalisation of dialogue between management and labour as laying the constitutional foundation for a collective labour law of the EC.⁹⁴

Roughly fifteen years later, the constraints and interdependencies created by economic and monetary union resulted in another change in approach to social integration. The Charter of Fundamental Rights, proclaimed in 2000 and given legal effect in 2009, brought together a wide-range of social rights in one document.⁹⁵ At the same time, the European Commission

European Integration (Polity Press 1995); Warloutzet (n 2), 192–194; Claude Didry and Arnaud Mias, *Le moment Delors: Les syndicats au cœur de l'Europe sociale* (Peter Lang 2005).

⁸⁸ Social integration was not an end in itself but was part of Delors's ultimate goal of political integration. See Charles Grant, *Delors: Inside the House that Jacques Built* (Nicholas Brealey 1994). On social dialogue see Jean Lapeyre, *The European social dialogue. The history of a social innovation (1985-2003)* (ETUI 2018).

⁸⁹ On the Charter see Alan J Riley, 'The European Social Charter and Community Law' (1989) *ELRev* 80.

⁹⁰ The UK signed the Agreement in 1997 and it was inserted into the EC Treaty by the Treaty of Amsterdam.

⁹¹ See generally Barnard (n 77), chapter 1.

⁹² Article 139 EC (now article 155 TFEU).

⁹³ Finn Laursen, 'The Treaty of Maastricht' in Erik Jones, Anand Menon and Stephen Weatherill, *The Oxford Handbook of the European Union* (OUP 2013).

⁹⁴ See Bercusson (n 77), part IX.

⁹⁵ The Charter was given full legal effect by the Lisbon Treaty (article 6 TEU). See Filip Dorssemont, Klaus Lörcher, Stefan Clauwaert and Mélanie Schmitt, *The Charter of Fundamental Rights of the European Union*

devised a new method of policy-making to implement its strategic goal of making the EU “the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion.”⁹⁶ New forms of governance, such as the Open Method of Coordination – flexible, non-binding processes – were to foster policy convergence.⁹⁷ Although academic commentaries at the time hoped that the Charter’s provisions, particularly those contained in the “Solidarity Chapter” could be used to develop a unifying ideology and normalisation of social standards, particularly against the backdrop of the OMC’s potentially deregulatory guidelines, in fact the shift to new forms of governance signified an ideological change. Social policy was subsumed under the overarching priority of enhancing competitiveness.⁹⁸ The European Commission and the Court of Justice have given effect to this change by mirroring, and at times reinforcing, a deregulatory approach to labour law increasingly dominant in a majority of Member States. There have been limited legislative developments since 2002. Existing legislation has been interpreted in “creative ways – often against the interests of workers – by the Court of Justice” and the demands of “Eurozone (and crisis) management [resulted] in sharp downward pressures on social standards in all Member States, in particular in those relying on EU and IMF for financial support.”⁹⁹ As a result, the European Social Model has attracted substantial criticism from labour law scholars for legitimising a neoliberal (European) integration process which demands far-reaching restrictions and reforms of national welfare states under the pretence of modernisation.

The European Pillar of Social Rights, launched in 2017, sought to address such criticisms; to increase the prominence and visibility of the European social dimension. It is a declaration which contains 20 principles and rights that are grouped into three themes which should guide future EU policy-making: (1) equal opportunities and access to the labour market; (2) fair

and the Employment Relation (Hart 2019). The Lisbon Treaty also mandated accession of the EU to the European Convention on Human Rights and made minor changes to the social policy provisions in the Treaties. See Tobias Lock’s contribution in this special issue and Barnard (n 77), chapter 1.

⁹⁶ European Council (n 4).

⁹⁷ See generally Philippe Pochet, *À la recherche de l’Europe sociale* (Puf 2019) and Amandine Crespy, *L’Europe sociale: acteurs, politiques, débats* (ULB Press 2019).

⁹⁸ Crespy and Menz (n 6).

⁹⁹ Philip Syrpis, ‘The EU’s role in labour law: An overview of the rationales for EU involvement in the field’ in Alan Bogg, Cathryn Costello and ACL Davies (eds), *Research Handbook on EU labour law* (Routledge 2016), 21. The Court of Justice’s judgments in Case C-438/05 *Viking* and Case C-341/05 *Laval*, both handed down within a week of each other in December 2007, are considered emblematic of the difficult coexistence between the EU’s internal market and national labour regulation. The cases have been extensively analysed: see the website of the European Trade Union Institute for links to literature (<http://www.etui.org/Topics/Social-dialogue-collective-bargaining/Social-legislation/The-interpretation-by-the-European-Court-of-Justice/Reaction-to-the-judgements/Articles-in-academic-literature-on-the-judgements>).

working conditions; (3) social protection and inclusion. Copeland explains that the pillar represents an amalgamation of: (1) social rights already guaranteed in the Charter of Fundamental Rights, albeit updated to reflect changes in the labour market; (2) existing social and employment policy competences and activities of the EU, particularly those governed by legally non-binding modes of governance; and (3) a few policy issues that attempt to both define and steer the future of a social Europe.¹⁰⁰ The Pillar has been given a cautious welcome by scholars although to date it proposes little that would suggest either a “transformation of the unequal European economy and society”¹⁰¹ or a recalibration of the constitutional imbalance between social integration and economic policy within the EU’s legal order. An example can be found in the European Commission’s consultation on possible EU action on fair minimum wages.¹⁰² The proposal, situated within the Pillar’s sixth principle on wages, has received broad support and is considered necessary not only to repair the damage inflicted by the austerity measures but also to deal with the economic fall out of the Covid-19 pandemic, and to diminish the social and economic disparities across the Member States.¹⁰³ It could contribute to building solidarity between citizens by encouraging the provision of a decent standard of living and preventing in-work poverty. Yet article 153(5) TFEU expressly excludes EU competence in respect of pay. Thus, the Commission will either have to frame its proposal for a directive in a way that does not directly affect wages thereby largely depriving it of its effectiveness; find an alternative legal basis for a directive¹⁰⁴; or resort to soft law options where compliance and implementation tend to be lower.¹⁰⁵ Thus, while the Pillar increases the visibility of the social dimension, existing competences in the Treaty limit the kind of measures that can be introduced.

V Conclusion – What Relevance do the Early Concepts of Social Integration Hold?

EU labour law scholars agree that there is a recognised “longer-term imperative to develop a social policy concept for the EU, that is, a basic consensus on the role the EU should play and

¹⁰⁰ Copeland (n 10).

¹⁰¹ Garben (n 12), 126.

¹⁰² SWD(2020) 105 final.

¹⁰³ The European Parliament, the European Trade Union Confederation and a number of commentators have expressed support. See <https://www.socialeurope.eu/why-eu-action-on-minimum-wages-is-so-controversial-yet-so-necessary>.

¹⁰⁴ https://www.coleurope.eu/system/tdf/research-paper/aranguiz_garben_cepob_9-19.pdf?file=1&type=node&id=53623&force=

¹⁰⁵ <https://www.socialeurope.eu/why-eu-action-on-minimum-wages-is-so-controversial-yet-so-necessary>.

the role it should not play in the domain of social policy.”¹⁰⁶ Looking back at early attempts at social integration questions the traditional account of European social integration as starting with its exclusion from the EEC Treaty. In fact, the link between trade liberalisation and international social standards has been debated in Europe since the end of the 19th century, reaching a first peak during the *interbellum*.¹⁰⁷ Mentalities; ideologies; economic, social and political challenges and constraints that had arisen before 1945 shaped the way European integration was pursued after the war: through “the exploitation of crisis, through hard negotiation, through the management of technical challenges [...] and, ultimately, through the politics of interest.”¹⁰⁸ The politics of interest have hampered and continue to obstruct the development of a European Social Model since the Treaty of Rome. For EU labour law scholars, there are familiarities in the *interbellum* debates on European integration – in relation to solidarity and sovereignty – which still resonate and which are worth revisiting when thinking about the future of social Europe.

Briand and Thomas recognised the importance of solidarity as an underlying principle of integration. Solidarity operates at two levels in these plans: between states; and between European citizens. Economic co-operation alone is not sufficient to resolve the tensions that inevitably arise between European states and which, if left unchecked, threaten social stability. Solidarity implies that one state will act in the interests of all states and that states will speak with one voice in times of crisis. For citizens, solidarity implies that individuals see the benefits of European integration in order to feel inter-connected; to be part of a moral community. Briand and Thomas recognised that solidarity would not come about organically but required concrete actions. The key lesson, therefore, can be taken from Thomas who proposed large, genuinely European projects with the purpose of creating inter-dependencies and making individuals enthusiastic supporters of integration.¹⁰⁹ The lasting effects of the Eurozone crisis and the more recent Covid-19 pandemic provide an opportunity to think again about the kind of large-scale European projects which could create solidarity between states and amongst citizens.

¹⁰⁶ Frank Vandembroucke, ‘The Idea of a European Social Union: A Normative Introduction’ in Frank Vandembroucke, Catherine Barnard and Geert De Baere, *A European Social Union after the Crisis* (CUP 2017), 1.

¹⁰⁷ Èric Bussière, ‘The European social dimension in search of a frame’ in Coppolaro and Meehi (n 58).

¹⁰⁸ Stephen G Cross, ‘Introduction: European Integration across the Twentieth Century’ (2017) 26(2) *Contemporary European History* 205, 206.

¹⁰⁹ Guérin (n 45).

Thomas and Briand also recognised that state sovereignty and domestic political interests would constitute obstacles to social integration; to the realisation of European projects. What Briand and Thomas describe in relation to state sovereignty can be applied *mutatis mutandis* to legislative competence. The political decision in 1957 to decouple economic and social policies (with competence for the latter largely residing at the national level) only worked by creating a functional complementarity between the welfare state and the supranational level.¹¹⁰ Yet this has had ramifications for the feasibility of the integration process; it created an “unstable chemical compound”¹¹¹. The incomplete design of European monetary integration, brought into sharp relief by the 2008 banking and subsequent Eurozone crisis, turned the already disintegrating functional complementarity between social policy and economic integration into a structural conflict creating a constitutional crisis at national and EU level.¹¹² A deepening of social integration can only be achieved if the social policy competences are revisited. Rephrasing Scelle and Mirkine-Guetzevich, there is an impossibility between advocating deeper integration while negating the need for further competences. If Member States are indeed serious about resolving the social Europe crisis then Thomas’s Memorandum serves as a reminder that European integration depends on the willingness of European states to give up parts of their sovereignty. The effect of the Covid-19 pandemic might present the opportunity to shift the political consensus in this regard.

¹¹⁰ Stefano Giubboni, *Social Rights and Market Freedom in the European Constitution* (CUP 2006), chapter 1.

¹¹¹ *Ibid.*, 18.

¹¹² Stefano Giubboni, ‘Stato Sociale e Integrazione Europea: Una Revisitazione Teorica’ (2017) 46 *Quaderni Fiorentini* 553.