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States' Social Security & Support for the Wage-Work Bargain

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Congratulations & Thank You

My thanks to the organisers for an excellent Congress and programme, and for my invitation to speak.



Abstract

In this paper I consider European States' social security systems and 'Social Europe', with a focus on support for the employment relationship and the wage-work bargain.

After introductory comments about the effects of the post-2007 crisis and recession, consideration is given to core features of in-work support and distributive mechanisms, and the balance between employers' responsibilities for wages and other occupational elements of the wage-work bargain and support from the State. Whilst attention certainly needs to be given to repairing and improving Europe's systems and 'floor of social protection' – something which will require radical new approaches at EU and State levels to the way in-work support is funded and delivered - the welfare of workers and their families will also require key distributive mechanisms like collective bargaining and wages and conditions-setting to be strengthened.

These will be essential next steps in rebalancing the responsibilities of employers, individuals, and State schemes in a renewed, rights-based Social Europe.



Key Points

Introduction & Context

Most European systems provide schemes which either *directly* support wages and the wage-work bargain: income transfers, tax reliefs, wage subsidies, tax credits etc, or *indirectly* assist it.

In the latter case support may be directed at the family, housing costs, schemes to boost family income, etc, thereby reducing the costs which would otherwise be borne out of the worker's wage income.

However, schemes have been hit hard...

The Crisis

Post-2007 crisis:

- Falls in wages, unemployment, austerity, cuts to social security (ILO, 2012/13 and 2014; IDS, 2014)
- Weakened labour market institutions, collective bargaining, regulation, etc. Austerity, eg in Spain and Greece, has been taking a big toll (Baylos & Trillo, 2013; Koukiadaki & Kretsos, 2012; Barnard, 2012)
- Social security systems' support adapting as work patterns change: France RSA (Vlandas, 2013; Denis & L'Horty, 2012); Austria BM (Steiner and Wakolbinger, 2010); UK UC (Puttick, 2102a; 2012b); Sweden, Spain (Mai, 2013)

Funding and 'sustainability'. Have we, as some commentators have suggested, started to reach the limits on what is sustainable..?

Europe's Well-Developed 'Floor of Social Protection' : Bachelet Report/ILO 2011

Bachelet 'gaps': now big holes

Nearly 25% of EU citizens 'at risk of poverty' (Eurostat/EU-SILC); pay cuts (IFS, 2013)

Responses? Repairs to the floor, strengthened collective bargaining (eg ETUC's 'social compact' proposals), alongside improved in-work support and State welfare 'nets' (ETUC, 2012a; 2013) and IER's Manifesto for Collective Bargaining (IER, 2013)

A case study in failure?

The food sector. 'Supermarkets: The real price of cheap food': Winners and Losers in the Supermarket Supply Chain', August 2014 (UK Channel 4, 2014)

What is Needed?

Undoubtedly...

Strengthened institutions: collective bargaining, effective wages and conditions setting, implementation of 'standards', and better enforcement

- a pro-active, rights-based 'Social Europe', responsive to a changing labour market
- Re-balancing of employers' and State programmes' responsibilities

Better institutions or regulatory interventions means reduced need for State support

Distributive Mechanisms & Interactions

Within the typologies of 'welfare'

Esping-Andersen, Pissarides, Barr et al... delivery is achieved by:

First, the income from wages, occupational benefits, and other elements of the wage-work bargain: the basic 'floor'

Second, State support and schemes of social solidarity, including in-work benefits, income transfers, wage subsidies, and other forms of social security and assistance.

On-going importance of *regulating* wages, hours, and WWB: ILO/Bonnet, Saget, 2012

Regulating Wages & the WWB

Specific Issues & Limitations

Minimum wage: UK, Germany, et al

- Typically set at too low a level? So State support (income transfers, etc) may be higher than it needs to be: also, as wages stagnate and other costs, eg rents increase, welfare costs rise (Kelly, 2013)
- Are other wage-setting mechanisms better, especially for the 'unorganised worker'? Eg sectoral wage-setting: UK wages councils, and Agricultural Wages Board model in Scotland, Wales, NI: Ireland's JICs (Kerr, 2013; Doherty, 2013)

A restoration of Wages Councils? That is the choice of three of the UK's four countries, helped by court intervention (Agricultural Sector Bill, UKSC 2014)

Like Angela Merkel, the UK's TUC sees these and other better wage-setting options (TUC 2013)

Why are Regulatory Floors Needed? Will Germany follow UK..?

The current German design process

Highlighting some of the key issues, and implications for social security and assistance schemes:

- NMW floors have a propensity to become a 'ceiling' (Resolution Foundation 2013a; 2013b)
- A 'two-tier' labour market (Bain, 2013), Tier 2 is dependant on sizeable State support
- The scale of low pay in Germany is big: up from 15% in 1990s to 22%+ (Steen, 2013). NMW will give a sizeable 'pay rise' to an estimated 17% of Germany's low-paid (Meyer, 2014): but, later some complex labour/social security inter-actions, and new 'dependencies'. A NMW and in-work benefits is *no* guarantee against in-work poverty (Social Mobility & Child Poverty Commission, 2013)

State Support & Schemes of Social Solidarity: The Social Wage/WWB

Variously described as the 'social wage', schemes of social solidarity, the welfare addition to the wage-work bargain, or more accurately the wage-work-welfare bargain (WWB).

The WWB has *two* transactions:

- the bilateral contract of employment,
- a secondary, further transaction between the worker and the State

Schemes' 'Facilitating' Role

At the inter-face of employment law and social security law...State support plays key roles:

- Supporting newer forms of work, and patterns, and underemployment, flexible working, etc)
- Facilitating entry to the labour market for key groups who would otherwise be *marginalised* and excluded from the mainstream.
- In these respects I am very much in accord with the views of early commentators like Hugo Sinzheimer (Sinzheimer, 1924; 1949) who saw the important inter-actions between social security law and rights complementing employment protection and rights. As has been said more recently, in these kinds of contexts, that the two systems operate as two sides of the same coin (Weiss, 2013).

Key Groups: Solidarity/Citizenship

Take-up of jobs and retention for:

- single parents, younger workers needing assistance to enter the labour market, and older 'returners'
- those with disabilities and special needs, helped by a mix of anti-discrimination, equalities measures, and State support (welfare-to-work transitions and retention).

In general, schemes provide invaluable support on the basis of solidarity and 'citizenship': a key function of 'Social Europe'.

However, is there a newer, competing discourse?
Supporting employers in a 'flexible' market...?

Support for Non-Union, Low-Paid Workers: the 'Unorganised Worker'

The context in the UK and EU

Significant number of workers are not in unions, and are not covered by collective bargaining. A key function is to address that 'exclusion', and provide support:

Direct support: France RSA (Bourgeois & Tavan, 2009; Vlandas, 2013)

Indirect support: Ireland, the Family Income Supplement (FIS), in conjunction with other schemes, albeit with limitations for some groups: non-'employees' and short-term jobs (under 3 months)

Standards & 'Rights'

An important dimension is the need for a rights-based Social Europe

In terms of 'standards', it is vital to start making a reality of ILO and other international standards (Korda, 2013), as well as the distinctly European jurisprudence in the ECHR, and EU Charter of Rights. In doing so, adherence to key measures at EU Law level such as the 'equal treatment' provisions in measures like Dir 2004/38 (free movement) is essential for Social Europe.

Does Europe do enough to actually protect core 'economic' rights? Sunstein, 2006: *The right to a remunerative job...to earn enough*

The Function of Rights

Among other 'functions', rights provide a counter to unfettered, sometimes irrational, administrative discretion in social security adjudication. It can also counter unwelcome judicial interventions: *Docherty & Jones, 2013* illustrated the problem of the courts failing to protect employees at the height of the crisis, when permitting massive in-roads to basic labour rights. Judicial activism is important in social rights (Whyte, 2002) – but this can cut *two* ways...

With social welfare schemes we have started to see the transition from what Charles Reich described in the 1960s as the theory that welfare is a 'gratuity furnished by the State', and thus subject to whatever conditions the State sees fit to impose' and 'the poor are all too easily regulated...' (Reich, 1964; 1965) – but there's a lot further to go.

EU & Social Europe

Whether at EU or national level, the two types of intervention and support I have been describing require a robust, rights-focused Social Europe – not least at a time when groups like EU migrant workers increasingly need the protection of domestic courts and CJEU/ECtHR in the face of tendencies threatening the cohesion of free movement.

The *St Prix* case (St Prix, 2014) offers a valuable example of this, and of the role of 'rights' in reinforcing expectations of equal treatment.

It also highlights the complex issues around judicial lacuna-filling, especially in the growth area of EU *citizenship* as a basis for developing rights.

St Prix, Equal Treatment & Worker Status

At a basic level St Prix was about retention of 'worker' status as a means of accessing replacement income from the State during pregnancy, and when this was not accessible from the employer.

At another it was about *much* more than that...

In particular, making a reality of equal treatment and expectations of dignity in the way our systems of social protection should operate, and if Social Europe is to work effectively in the key area of migrant workers' rights, and free movement.

The CJEU and UKSC's actions have also served to reinforce rights and standards set out in measures like the UN Migrants' Rights Convention (1990)

St Prix: Trainee Teacher/Assistant & French Welfare Claimant in the UK

Jessy St Prix was a French national residing in the UK, and working until she was pregnant...



St Prix, Social Rights & 'Residence'

Whilst she was on the pay-roll, no problem It was generally easy to demonstrate 'qualified person' status under Dir 2003/38 and the UK's EEA

(Immigration) Regulations 2006 as a 'worker' or 'Later this became more problematic:

Later this became more problematic:

- Six months into her pregnancy she could not get lighter, less demanding work

- Unable to earn wages, and 11 weeks before her expected week of confinement, she sought assistance from the UK social security system.

Key Question: did she retain a right of residence (RtR) and therefore a right to support? This depended on whether she could retain 'worker' status. Happily the CJEU has given the right answer ('yes'). As importantly, for the right *reasons*...

Conclusions

Clearly Europe is still in recovery mode.

The crisis is by no means over.

Much repair work is needed, and changes to improve our 'floor of social protection' are overdue. Among other things, funding of State schemes is still a key issue.

Ideally, at the heart of the renewal process will be measures to strengthen distributive mechanisms (collective bargaining regulatory systems, etc) if the floor is to be secure, and if we are to see a renewed, strong, and rights-based Social Europe.



Thank you!

I thank you for your kind attention!

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