

ON THE SOCIAL STATE OF THE E.U.

**(THE ETHIC OF CARE, THE OPEN METHOD OF CO-ORDINATION, AND THE
FUTURE OF EUROPEAN SOCIAL POLICY-MAKING)**

by

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B.A. Honours, The University of British Columbia, 2001

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF

MASTER OF ARTS

in

THE FACULTY OF GRADUATE STUDIES

(Political Science)

THE UNIVERSITY OF BRITISH COLUMBIA

January 2007

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ABSTRACT

The following study presents an analysis of historical and current trends within social policy development at the European level. Recognizing the success which the EU has achieved in economic and monetary union since the Treaty of Rome (1957); recognizing the varying levels of success which individual member countries have achieved in terms of their own welfare state policies, I ask what conditions might be necessary in order to achieve comparable success for social policy development and provision at the Union level. While recognizing the existence of myriad interpretations of the integration process (from neo-functionalism to intergovernmentalism, corporatism to pluralism), as well as the many tensions and social cleavages at play within the various societies of the Union, this study focuses on only two ethical/theoretical paradigms, and on two methods of governance which can or could be used for future European social policy development. These are the Ethic of Justice and the Ethic of Care, and the Community Method (or hard law approach) and the Co-Ordination Method (or soft law approach), respectively.

The two principal questions addressed in this study are: 1) Which theoretical paradigm is best suited to address the complex process of European social policy integration? and 2) Which method, or mode of governance, would best operationalize this chosen normative paradigm? In attempting to answer these questions, the works of John Rawls, Ronald Dworkin, Jeremy Waldron and David Miller (justice), as well as those of Joan Tronto, Olena Hankivsky, Christine Koggel and Selma Sevenhuijsen, are discussed. An overview of the historical developments of integration within the social policy field is also offered as a means of emphasizing the continuity that exists within various soft law traditions of EU policy development. I also propose three different criteria of *responsiveness* with which to evaluate the two paradigms and governance methods. Finally, as a means of drawing upon the positive attributes of each theoretical framework and mode of governance, two hybrid or compromise solutions are proposed and analyzed, namely a Principled Ethic of Care and the Open Method of Co-Ordination.

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ACKNOWLEDGEMENTS

I wish to thank Dr. Barbara Arneil for her patience, dedication, thoughtful advice and insightful commentary during the long and arduous process that was my MA thesis preparation. Never could I have imagined, as a political neophyte seated in her Politics 100 lecture, that one day I would be working under her fine supervision as a teaching assistant in that superb class. Her seminars and discussion groups, much like her lectures, inspired in me an appreciation for the importance of political theory in this troubled world; a desire to investigate all topics of philosophical interest and to find political significance in all things social, from the mundane to the truly extraordinary. For this I am truly grateful.

Thank you also to Dr. Yves Tiberghien for offering me the possibility of continuing my in-depth studies on the European Union at UBC, by means of a directed reading course. In everything from a clearer appreciation for the “European story,” to social policy and deliberative democracy in all of its guises in the EU, his course offered the small legion of Europeanists at UBC the possibility of analyzing this complex political structure with focused intention.

I also wish to acknowledge Dr. Olena Hankivsky, whose thoughtful work on the Ethic of Care has been an inspiration for my own social policy studies. Having had the opportunity to work with Dr. Hankivsky as an assistant on one of her many research projects, I was always struck by the insightful manner in which she held true to her conviction that, in challenging certain “truths” of social theory and public policy-making, a far more humane style of politics could actually be conducted. For her kind words of support and for the inspiration that her work provided me, I offer my sincerest thanks.

And last, but certainly not least, a personal note of appreciation to Dr. Don MacInnis. His ability to speak with passion on as seemingly dry a topic as *das Subsidiaritätsprinzip*, showed me how great things could be discovered in looking carefully at the complex workings of the EU. From politics in film to party systems in Italy, his great knowledge of European affairs, and charming manner, always engaged his students and made us feel welcome in his class and during a discussion. For his friendship and for instilling in me a passion for European politics and for political cinema, I thank him.

For my own personal community of care, my family –

to Ettore, Paula, Debora and David

with love

DdM

Social justice requires the notion of a society made up of interdependent parts, with an institutional structure that affects the prospects of each individual member, and that is capable of deliberate reform by an agency such as the state in the name of fairness (Miller: 4)

The morality of rights is predicated on equality and centred on the understanding of fairness, while the ethic of responsibility relies on the concept of equity, the recognition of differences in need. While the ethic of rights is a manifestation of equal respect, balancing the claims of other and self, the ethic of responsibility rests on an understanding that gives rise to compassion and care (Gilligan, 1982: 165)

Conscious that Europe is a continent that has brought forth civilisation; [...] Drawing inspiration from the cultural, religious, and humanist inheritance of Europe, [...] Believing that reunited Europe intends to continue along this path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world [...] (Preamble – Draft Treaty Establishing a Constitution for Europe)

1. INTRODUCTION

That the European Union has been successful in bringing together nations once torn apart by centuries of war, to create a common internal market and currency, and to present a unified economic bloc to the world stage, is beyond reasonable debate. After all, the political desire to establish the Community, declared by Robert Schuman in 1950 as a means of making future wars between Germany and France “not merely unthinkable, but materially impossible [...] would not have succeeded without adequate performance in the economic field in which it was given powers” (Pinder: 3). What is less clear, perhaps, is what the logical conclusion of European integration is meant to look like, what areas of concern it can effectively address, and which institutions and methods of

governance it can use to tackle the concerns, values and needs expressed in the lofty preamble to its constitutional process. If Europe is meant to be more than simply a cog in the giant machine of economic globalization; if it is meant to truly reflect the cultural, religious and humanist intentions of a “people’s Europe”, the real debate will necessarily focus on the social dimension of European integration. Whereas in past, discussions on Europeanization of the continent have focused on quantitative concerns (making Europe “larger” or “deeper”), more recently there has been a shift toward asking, as Loukas Tsoukalis does in his 2003 study, *What kind of Europe?*

This more qualitative dimension of the EU debate allows some authors to expound upon the contours of a so-called “European Dream” which might be emerging, focusing as it does on the social aspect of European political life, indicating that a high degree of social policy provisions and welfare expenses within the Member States, has actually helped the EU to achieve economic productivity levels which are set to eclipse those generated by the traditional “American Dream” across the Atlantic (Rifkin, 2004). In the past two decades, specifically, there has been a renewed interest on the part of the European Commission to reinforce the social dimension (welfare policies, quality of life analyses, issues related to degrees of social inclusion) of the integration project. With one social policy measure at a time, the Union has sought to accrue many of the powers of social policy provision, once strictly limited to the Member States, and albeit only with limited success. At the same time, however, the core political context within which this qualitative debate is being conducted is one of growing public resentment for, and detachment from, the European-level structures which are seeking now to champion the social dimension of European integration.

Given the renewed interest in focalizing the social discussion within the structures of a constitutional framework, the “social question” takes on even greater importance. The political crisis caused by the public rejection of European constitutionalization (due in no small part to the citizens’ frustration with the “social gap,” or lack of social policy provision at the European level), cannot be understated. Future integration, both *positive* (social and political) and *negative* (economic liberalization) clearly rests on the ability of the European Commission, Parliament and Council, to address this perceived policy lacuna. However the means of tackling this pressing public need, may not be by limiting debate to purely structural concerns such as questions of taxation powers, basic redistributive policies and juridical questions of competence. In fact it is more likely that a means of escaping the current constitutional and political impasse can be found in alternative *processes*, rather than *structures* (EU institutions, a constitution, or taxation schemes). In fact it appears necessary to view the social dimension of European integration as more than simply a budgetary, juridical, or economic concern focused on linear discussions of welfare redistribution and vertical transferral of social policy competence to the Union-level. Rather, a more nuanced and less economistic attention to procedures could finally give voice to the specific social concerns voiced by the millions of EU citizens who opposed the recent *Draft Constitution*.

This, however, is no small task. Given the push towards the four (economic) freedoms of European integration (movement of goods, persons, services and capital) since the Treaty of Rome 1957, the Union’s foray into the area of social policy, has consistently been “concerned with facilitating the efficient operation of European markets rather than with the broader social rights of citizens” (Beck et al. 1997: 5). The

integration process, guided and governed by the Community Method (of “hard law” provisions, directives and regulations), has been described, however, as “an elite conspiracy, with good intentions and pretty remarkable results” (Tsoukalis: 219). And yet, in attempting to “lay the foundations of an ever closer union among the *peoples* of Europe” (Preamble, TEC – my emphasis), the very process of integration has been guided by a political de-coupling of social and economic policy, and by a de-coupling of the process from the people. This, in turn, “allowed economic policy discourses to frame the European agenda exclusively in terms of market integration and liberalization, and it ensured the privileged access of economic interests to European policy processes” (Scharpf : 110). Privileged access was also reserved to high level policy actors, with very little public access to the processes of “Europeanization.”

Within this structure of governance, traditional social policy was relegated to the Member States and to their social and welfare policies. These Welfare States, grouped into three principal social models (Esping-Anderson, 1990) – Scandinavian, Continental, and Anglo-Saxon – have produced distinct policies to address the social needs of their respective communities. And yet, while the diversity between and within the models should not be underestimated, many authors have described the common threads within them. Anton Hemerijck emphasises a common commitment to social justice, the recognition that social justice can contribute to economic efficiency and progress, and the high degrees of interest organisation (primarily through negotiations between governments and the social partners), which all three models share (Hemerijck: 212). This commitment to social justice (citizen-based in Scandinavia, work-based in the UK,

and corporatist in Continental Europe), demonstrates a social policy paradigm, very much imbued with a liberal ethic of justice, and based on a variety of social rights.

Should this ethic of justice continue to serve as the normative framework within which to create, integrate and co-ordinate EU social policy? Would it be more appropriate to take the best example of a citizenship or rights-based social welfare state, such as the Scandinavian model, and simply translate it to the European level? Tsoukalis and others would argue that “trying to build a ‘social Europe,’ some kind of Scandinavia writ large, still looks like trying to build skyscrapers in the sand.” (Tsoukalis: 211) Different social tensions and cleavages (based on class, race, gender, economic status) and the clash between neo-liberalising market forces and socialist redistributive impulses will all continue to play heavily into this debate. Unfortunately, in navigating the myriad projects, intentions and discourses involved, the Union has tended to simply defer these questions, focusing instead on economic dimensions of the EU.

Despite the de-coupling of economic and social policy which EU integration has perpetuated, and despite the diversity of social policy models which exist within the Member States, there is an implicit belief of many that, given the *appropriate* normative framework and effective operationalization of such a paradigm, EU social policy – if not a European Welfare State (Kleinman, 2002; Esping-Andersen et al., 2002) – is a very real and possible goal within the process of European integration. There is also the explicit need for action by the EU in the area of social policy given the pressures of globalisation, an ageing population, and the most recent enlargement processes which added a total of twelve new countries to the Union (High Level Group Report, 2004). In past however, any successes in integrating the different models, has relied heavily on the Community

Method of governance and policy making. Modelled on traditional state level powers, the Community Method has given juridical power to the Commission, Council and Parliament (EP) to act in the name of all Europeans on specific areas of social policy concern.

The real qualitative debate in the European social policy context, then, appears to revolve around two axes. First, what *is* the appropriate theoretical paradigm for social policy development at the EU level? Is it the traditional justice paradigm rooted in social rights mentioned above, and described by some theorists as “justice as fairness”? Or is there a different normative framework that would be more appropriate, like the *ethic of care* or responsibility rooted in Carol Gilligan’s ethical theories, but further developed by others in the EU and beyond? The second axis of the debate, instead, asks how the normative framework chosen could be operationalized to full effect, allowing social and economic agendas to be re-coupled. Or, given the understanding that social policy in Europe is “an indigenous plant rooted in European values and experiences,” (Roberts and Springer: 3), how can its central role be returned to the European agenda? To this end, is there a form of EU governance which best fits the requirements of policy-making in the social arena?

At first glance it would appear that social justice is the means by which limited Community action in the social sphere has evolved. European “hard law” measures – directives, binding legislation and ECJ rulings, have created the sense that European citizens have acquired certain social rights with respect to vocational training, freedom from discrimination, the right to education and to free mobility within the Union, among others. The Charter of Fundamental Rights, the Social Protocol, the inclusion of social

provisions within the original and subsequent Treaties of the Union, have indicated that in its pursuit of an “ever closer union,” the Community has decided to place “*the individual at the centre of its activities*, by establishing citizenship of the Union and by creating an area of freedom, security and justice” (Charter of Fundamental Rights – Preamble). Furthermore, the Community Method, as a principal form of governance within the EU, is considered a form of “hard law” because it “creates uniform rules that member states must adopt, provides sanctions if they fail to do so, and allows challenges for non-compliance to be brought in court” (Trubek and Trubek: 344).

Placing the individual at the centre of EU social activity, while consistent with a liberal principle of justice as fairness and an ethic of rights, seems almost fundamentally at odds with the reality that “historically, Europeans perceive themselves as part of a community, rather than a group of individuals; they tend to believe that their personal interests and those of the community are linked” (Roberts and Springer: 13). More importantly, and contrary to the elite-driven Community Method, there is also a spirit of public engagement which is historically rooted in European experience but which perhaps is not being fully realised in the integration process. As Ota de Leonardis has noted, “the historical experience of the welfare states, especially in Europe, has bequeathed, along with many failures and problems, also a social heritage of ‘publicness’ or *Oeffentlichkeit*” (de Leonardis: 4). Public spaces of dialogue took root and developed, and the political discourses and practices grew denser, rich with social themes, choices, actors and administrative competences; all of this, within the territorial bounds of the European Member States. This elite-led, opaque (rather than transparent) method of

social policy co-ordination at the EU level, then, cannot be said to comply with this sense of “publicness”.

When coupled with the understanding of the “privileged access” received by economic matters in the EU policy process, it seems that EU social policy, under the justice paradigm of fundamental rights, and under the governance of the Community Method, makes social integration *doubly* removed from the social reality of Europeans’ lives. The asymmetry between the economic and the social, when combined with the centrality of the individual in the activities of the Union appears to have problematic consequences. As Tamara Hervey argues:

EC law and policy often proceed on the basis of commodification of individuals: it is not people but ‘workers’ (and their families) who have security rights if they move around the EU; ‘education’ is training for proto-workers, ‘social inclusion’ turns out to mean economic inclusion in the labour market, and ‘development’ turns out to be measured in terms of economic growth, not enhancement of people’s quality of life (Hervey: 204).

In terms of social policy integration, the economistic development described above may be counter-productive. If the people of Europe understand themselves and their interests to be linked with those of their many communities, any normative framework meant to foster social integration, should reflect this *relational* conception of the individual. Such a paradigm requires an understanding of the basic values of caring and nurturing which European “individuals” exhibit in their personal and communal experiences. Moreover the method for operationalizing such a framework – so as to enhance people’s quality of life - would require “stressing the importance of human relationships as key elements of the good life [...] in a culture that stresses, as its bottom line, an unlimited concern with productivity and progress” (Tronto: 2).

The purpose of this analysis, then, is two-fold and as such it focuses on two principal questions:

- 1) Which normative framework, an ethic of justice or an ethic of care, is best suited to address the complex process of European social policy integration?
- 2) Which method or mode of governance, at the EU level best reflects and operationalizes this chosen normative paradigm?

To answer these two questions, I suggest three criteria of *responsiveness* – object, subject and institutional/operational. The first two concern how responsive the two paradigms would be to the basic goals or intentions of EU social policy (object), and to the citizens' needs themselves (subject). The third criterion, instead, is used to answer my second central question. In determining which method of governance best operationalizes the more appropriate paradigm, it is necessary that it be responsive to the many institutions, groups, and policy networks already acting within the Union.

In Chapter 2, I outline the basic elements which constitute the *intent* or intention of EU social policy (as expressed historically by the Commission, the Council, the EP, or the so-called “elites”), as well as the *action* (and in some cases inaction) which these same actors have engaged in for the purposes of bringing together the three “social models” described above. The purpose is to give the reader an understanding of the *dense context* within which the two normative paradigms would ultimately be cast. But it is also to both demonstrate the, albeit limited, success of the Community Method in achieving

certain social goals, and to outline some of the primary actors and institutions within the EU social policy structure. These descriptions and evaluations then serve as the model against which I analyse and contrast the Open Method of Co-Ordination or OMC (a “soft law” rather than “hard law” policy governance mode) in Chapter 4.

Chapter 3, instead, focuses necessarily, on the normative locus for this discussion. I analyse some of the principal elements of the ethic of justice (equality, autonomy and impartiality), in contrast to the principal elements of an ethic of care (equity, interdependence and contextuality). My selection of a care ethic as an appropriate contrast to the justice paradigm, is based on the intuitive understanding that the relational ontology it offers is congruent with the European “sense of community” and “publicness” mentioned above. For this purpose, key elements of the writings of John Rawls, Ronald Dworkin, Jeremy Waldron and David Miller (justice, social justice and rights) are contrasted with those of Joan Tronto, Olena Hankivsky, Christine Koggel and Selma Sevenhuijsen (care and responsibility).

Ultimately, in recognising the power of justice and rights to provide a “position of fallback and security” in the event that caring relationships might fail (Waldron: 374), while also taking heed of the demand that ethicists “jettison the idea that *care* needs *justice* to benefit from the power of *principles*” (Chriddenden: 101), I agree with the need for a compromise between the two paradigms. Such a compromise has been described as “just caring” or “caring justice” (Koggel: 187, 200), or most appropriately as a “principled ethic of care” (Hankivsky: 32). OMC, outlined in Chapter 4, and in contrast to the Community Method of Chapter 2, is then offered as a “best-fit” means of following the spirit of this principled ethic of care. Given the relative novelty of the open method (it

has only formally been in use since the 2000 Lisbon Summit), the contrast offered between OMC and the Community Method is uneven in one crucial respect. My description of the latter allows me to offer concrete examples of EU social policy achievements, while with the former only examples of perceived potential success can be offered. This is, however consistent with the normative discussion of this thesis. The transformative potential of both an ethic of care and OMC does, I contend, allow for a thoughtful re-examination of the actual accomplishment of both the ethic of care and Community Method-created social policy.

And finally, for the purpose of this analysis, social policy is understood to involve “an intervention by governments or other public institutions designed to promote the well-being of its members or intended to rectify social problems” (Eva Feder Kittay – quoted in Hankivsky: 9). Furthermore, in a purely academic sense, I share the belief that “social policy scholarship should focus on the *totality of social relations* with respect to their affecting of human well-being” (Therborn: 28). This mirrors the need of an ethic of justice to show that certain *principles* are “philosophically coherent and can be welded together to form a cohesive whole,” (Miller: 245) and the need of an ethic of care to emphasise the relational ontology inherent in social policy *practice*. Social policy, then, is both policy prescription (or concrete policies) and, more importantly perhaps, policy process. In wanting to elaborate on the normative and operational implications of my conclusions, I will focus more on the latter than on the former. The effectiveness of social policy, in this context, can best be judged by “the extent to which citizens are able to *participate* in the social and economic life of their communities under conditions which enhance their well-being and individual potential” (Beck et al., 2001: 7).

2. THE (HISTORICAL) DEVELOPMENT OF SOCIAL POLICY IN THE EUROPEAN UNION

2.1 Desirable, Feasible, Practical and Debatable?

The history of the European Social Model is one of fragmentation and competition in the European Union, both between national visions of a legitimate Europe and within and among EU level institutions, often forcefully articulated and saturated with normative meaning. It emphasizes the contested politics of competing 'European' projects, not a rational and technocratic policy-making process. (Wincott, 2003: 279)

An analysis of the development of social policy at the European level is, it would appear, wrought with competing perceptual lenses and with often starkly opposed discourses and sub-discourses. While clear intent by the Member States and the European Commission in the area of social integration is not lacking, the dearth of actual measures taken and legislation enacted, have led many to question both the legitimacy of the EU as "social champion," but also its effectiveness in being able to balance and reflect the many social traditions at play within the various societies which comprise the Union. These competing "projects" which Daniel Wincott alludes to, identify the great difficulty faced by academics, theorists, political pundits and political actors alike, in making sense of the vast network of policies, legislation, initiatives and debates which have developed in Europe over the past fifty years; discussions in the name of social progress, social quality and the welfare state, which in one form or another have advanced the possibility of a need for a clearly identifiable European social model. And yet above the cacophony of competing interests, needs, and methods, certain historical and sociological realities remain constant, and lend weight to the justification for a comprehensive model which can be used in EU social policy, as integration continues into the 21st century.

On a sociological level, the long-standing influence of Christianity, Christian humanism, and the influence of the Catholic laity (especially after the 1968 Vatican II Council) in many continental European countries (and coupled with Communist Party influences in France and Italy, among others), constitutes a major social factor in the extant policies and political programmes which flowed from these societies. Coupled with this, the historical ramifications of the Second World War, and the welfare states which emerged after it, in a concerted effort at economic and social reconstruction, also helped to create the context within which the EU social policy debate was cast. And while Europe is no longer specifically Christian (or Communist for that matter), “it is still specifically social: the legacy of the ‘social question’ is *central* to the European road to and through modernity” (Therborn: 21 – my emphasis).

Recognising this collectivist undercurrent, is in no way meant to deny the existence of other very real social tensions and dialogues which have guided political concerns in Europe. Protestant, individualistic morals, for example, are very much woven into the social welfare structure of countries such as the UK. But these undercurrents are also very much wrapped up in traditional constructions of justice ethics. As such, and in the spirit of re-evaluating that very ethic, it is instructive to shed light upon the social practices in Europe which offer the clearest contrast to these individualistic tendencies. Even with the advent of *liberal* democracy, and with the ascendancy of a political model based on individual rights, the Christian humanist undercurrents in European thought, have continued to emphasise a truly collective quality to political action in Europe. This very sociological reality, albeit vague in its concrete expressions, has profound consequences for the development of EU social policy.

If a commitment to social policy is one of Europe's distinguishing factors, based on common values and therefore unimpeded by the political leanings of one government or another; if it is firmly rooted in religious, historical and ideological heritage, then the discussion of EU social policy is not so much about the desirability of social protection measures, as it is about their feasibility at the European level. All members of the Union finally signed on to the Social Chapter of the Maastricht Treaty, even the historically neo-liberal UK government. Clearly, tensions still exist about the extent to which, and the manner in which, governments (whether national or supra-national) engage in social policy creation. But commitment to various basic goals and projects at the Union level - which could only be described as falling under the rubric of social policy provision - has been agreed upon by the political actors who represent these various discourses.

Traditional redistributive methods, however, were firmly grounded in national discourse, related in varying degree to a citizenship-based notion of entitlements. Based on this, alone, it would seem evident that social policy would be most feasible at the national level. And yet, with the advent of "European citizenship," enshrined in the Maastricht Treaty, "it becomes increasingly viable to begin to compare the EU to a nation state and to determine whether, and in what respects, it measures up to or falls short of the responsibilities of nation states to its citizens or inhabitants" (Hervey: 12). The "territoriality" of traditional social security systems, under the strict purview of national statutes, has consistently been eroded to the point that when not being challenged in practice, is clearly becoming a "legal fiction" (Terwey: 107). This can be attributed to decades of economic integration which sought to expand market forces, bring down internal trade barriers and create a larger market of labour, capital and resources. As a

result, the Member States have had less direct ability to govern redistributive measures, and have been required to find alternatives and concessions at the European level, through treaties, negotiations and social dialogue.

Mark Kleinman's analysis is instructive because it focuses the issue of feasibility for EU social policy integration into three main criteria: efficiency, equity, and solidarity. On the first point, it becomes evident from his analysis that since the social pressures from economic integration often came from a set of supra-national institutions and regulatory bodies, that these same bodies would be best suited to deal with the social problems which result from the processes which they created. The real question though, is whether or not the result should be a completely uniform social policy approach, or one which accepts and promotes a dialogue between the different policy responses of the individual Member States *at* the supra-national level. As Kleinman notes, "diversity, by encouraging innovation, experimentation and comparative research might well strengthen the dynamism and technical efficiency of social policy" (Kleinman: 7). In terms of equity, the feasibility of EU social policy integration is argued in the same fashion. If the process of market reform which the EU created has led to inequalities in various areas of the Union, then it would follow that it is possible for it, given the appropriate resources, to tackle these issues. And finally in terms of solidarity, and again related to the newer concept of European citizenship, it is feasible that the EU advance a social policy agenda by means of "putting meat on the bones" of its nascent citizenship. This is, after all, a badge of statehood, though limited it may currently be, and follows a tradition already at play in various Member States, namely social policy entrenched, at least in part, in clearly identifiable and accessible "rights."

So if European-level social policy is desirable, given the historical and sociological context within which European integration emerged, and feasible, given the institutions (supra-national bodies and the notion of EU citizenship) already at work in Europe, then the discussion turns to the practicality of EU social policy development. Here, the institutional measures and processes which would either promote or hinder social policy integration can be addressed. For the former, the Economic and Social Committee and the European Social Fund would be examples of bodies which provide both 'social dialogue' between states, interest groups, employers and workers, and the resources with which to pursue the redistributive aspects of social policy, respectively. A clear institutional hindrance to EU social policy development is the *subsidiarity principle* which, having been proposed throughout the 1980s, was finally enshrined into the EU Treaties at Maastricht in 1992. The principle (Art. 5 TEU) states that the Community can take action in an area "only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States". So clearly, even if the Community wishes to act on a specific social policy it would first need to justify its action in that field.

The result has been a general trend toward seeing *most* policies (specifically those not pertaining to the internal market) as being best dealt with at the national rather than supranational level (Nugent: 71). Patrick Venturini however argues that what is needed is to view the subsidiarity principle not as a zero-sum game within which the Commission always loses, but rather as an opportunity for co-ordination; a principle of "positive subsidiarity" within which co-ordination, rather than harmonisation of social policies is promoted by means of multi-level surveillance, dialogue and framework-building

(Venturini: 110). The Europeanization of social policy, in this light, *is* practical, if the policy process is seen as flexible, adaptable, more re-active and less pro-active. Co-ordination involves dialogue between the different actors while harmonisation can be seen as divisive, and an easy way for a Member State to refuse Community incursion into a national policy sphere, based on the subsidiarity principle. This is an adaptation of institutional settings in the broadest sense (and at different political levels) in response to the *dynamics* of integration (Featherstone: 19). The institutions are not seen as static and guided by set principles but rather guided by a framework and more focused on process rather than outright prescription at the EU level. In a sense, the Commission is given an almost Herculean task of working within the strict jurisdictions given to it within the treaties, while still co-ordinating efforts on a massive scale, so as to bring member states in line on certain social provisions. Practical, but difficult, desirable and feasible, the Commission, as a possible vehicle for social integration, often appears to be an old dog, with no bite, and very little bark.

The idea that the European Union “*is* the process rather than a state” (Carter: 112), may make the practicality of EU social policy complicated, but it also makes any discussion or analysis of it doubly challenging. Given the competing goals, projects and interests, as well as their attendant institutions, regulations, and organisations, any discussion on a European Social Model or on social policy integration at the EU level requires an understanding of the main discourses and sub-discourses at play. When speaking of the over-arching process of integration, the primary meta-narratives have revolved around *neo-functionalism* and *intergovernmentalism*. The former is the belief that in the integration of one area of society and all of its structures (coal and steel

production in the ECSC), there would be a “spill-over effect” into other policy areas. The latter instead held the national governments to be supreme, arguing that any decision to share power in a policy field would be done primarily in the national interest with a view to maintaining sovereignty. Moreover, since the EU institutions dealt primarily with ‘low politics’ (economic and social policies), as opposed to ‘high politics’ (foreign and military affairs, where clearly there was no integration), community institutions really were of seemingly secondary importance. At its height of academic prominence in the 1970s, this discourse led many to argue that the EU was all but a “divided, fictionalized, and weak institution that had little impact on major economic and social problems.” (Geyer: 34) One sub-discourse within this debate is important as it would shape the development of social policy; namely *economic* versus *political* integration. Here the question revolved around whether or not social policy (very clearly political) could only ever be a sub-set, corollary or adjunct to economic policy. The “economic” was guided by market forces, whereas the “political” involved compromise, negotiation, and the national veto. Furthermore, development of social policy has been described as a fight between neo-liberalizing politics (for example of the UK government in the 1980s) and those of a socialist-minded Commission (for example under Jacques Delors). These discourses not only cast the history of integration in a particular light, but also colour current models, descriptions and actions on how social policy *should* develop at the European level.

Finally, when referring to specific policy networks and institutions, like the ESC, one can ask whether a *corporatist* structure has developed (with clear top-down control, and as a product of the Belgian and Dutch models first proposed in the 1950s), or

pluralistic one, given the much looser policy dynamic which has developed due to European-level civic organisation, and a slow marginalisation of the ESC in EU politics (further discussed below). Did EU social policy develop in such a way that pressure groups have free access to this emerging political super-structure and process, offering a counter-weight to undue concentrations of power? (Falkner: 32) Or is there a sense that EU institutions were by no means beholden to these competing interests, but rather actively tamed, coerced and corralled then into pre-defined channels of discussion?

The reason that these discourses and conceptual lenses are germane to the discussion of (historical) social policy development, is that the effectiveness of the normative paradigms (justice vs. care) that will be analysed in Chapter 3, stems directly from their ability to define both how social policy has developed in the EU, and also how best it can develop in future. Neo-functionalism, intergovernmentalism, political, economic, corporatist and pluralistic discourses form the foundation for a comprehensive (though not exhaustive) understanding of the driving and divided forces behind all EU integration theories. The many discourses give voice to the “competing European projects” which Wincott speaks of, and lead to an understanding of social policy integration as one of ebbs and flows, peaks and valleys, periods of social activism followed by, and sometimes concurrent with, periods of “benign neglect” (Moseley: 149; Hervey: 14). The purpose, in describing the competing tensions and discourses above, is to emphasise that this very complicated social and institutional environment is the one in which EU policy-makers have had to crystallize their goals for social integration. For the EU (and specifically the Commission) to express a common goal or intent in an environment such as this, is no small feat, but it is exactly this which over the past half

century it has slowly done. Hearing the social policy intent of the Commission, above all the underlying and overlapping discourses and tensions, is akin to hearing an umpire's calls in a stadium full of roaring fans. Discerning this intent, away from the roar, is the focus of the following section.

2.2 Social Policy Development in the EU : Intent

While the original goals of European integration have often been cast in purely economic terms, focusing on an internal market, a single currency, the free movement of goods and labour, there have also been clear indications that the EU founders, and then the Commission, envisioned a more political (and therefore controversial) role to be played in the area of social policy. The preambles to treaties and charters, the lofty goals and aspirations for a “social Europe” are clearly outlined in Commission reports, recommendations, and initiatives, and their tone appears to change only in terms of emphasis. In other words, discussions on social policy are either, returning to the discourses mentioned above, political in nature or purely economic and thus mentioned only in reference to the optimum functioning of an internal market.

Moreover, while it might be easy to dismiss EU integration in this policy area, based on a presumed lack of concrete action, it is decidedly more difficult to make the argument that EU institutions, and in particular the Commission, have lacked intent in creating a “Social Europe.” In addition, it would be incorrect to identify the Commission as the only body which has expressed goals in this policy area. As Laura Cram argues, “the paucity of binding legislative achievements in the social field [...] belies the many

far-reaching declarations made by the Heads of State and Government expressing their commitment to the social dimension of European integration” (Cram: 29) Effectively, the Heads of State have the dual pressure of promoting (as members of the EU) policy integration, while concurrently attempting to protect (as national leaders) a certain *status quo* with regard to policy jurisdiction and national sovereignty (Rifflet: 23). And perhaps the Treaties themselves reflect this very ambiguity. Clearly though, as early as the lead-up to the Treaty of Rome, statements of intent could not be considered purely neo-liberal or economic in nature. The Treaty itself, in addition to famously calling for the establishment of “an ever closer union among the European peoples”, further directs efforts of the signatories “to the *essential purpose* [my emphasis] of constantly improving the living and working conditions of their peoples” (Preamble, Treaty of Rome, 1957).

Of course the Commission, unencumbered as it was, by the dictates of national sovereignty, has throughout the history of the integration project, made bold claims of the necessity for and desirability of European-level involvement in the social policy sphere. In its 1st General Report, it indicated that in promoting integration it would “*neglect no sphere* [my emphasis] in which it may prove possible to ‘promote close collaboration between member states’ (Art. 118 TEC) and will use all appropriate procedural methods” (1st General Report, 1958- from Cram: 32). In 1962, at its Conference on Social Security, the Commission concluded that outright harmonisation of social security schemes should be pursued, even though industry employers and most member countries had already rejected the idea as too costly. So again, clearly, the Commission felt itself free to involve itself in the social policy sphere, and at least until this conference, did not appear to consider social policy integration as secondary to economic integration.

And even when it was forced to temper its approach, as a result of Council's refusal to co-operate and of the Veldkamp Memorandum (see section 2.3.1) which followed, the intent to promote social policy at the European level still appeared to be a priority. In deciding upon its priorities, it based them on the fact that "social policy must play an effective part in the steady advance towards [...] union," that social policy only "takes on its full significance by its contribution to the fulfilment of the great social objectives," and finally that it was simply "inconceivable" that an economic and monetary community could be built without addressing the social requirements which are important in planning the economic life and prosperity of the Member States (Annex to Bull. 4-1971: 55).

Even with the ascendancy of Thatcher-inspired deregulation and neo-liberal economic imperatives in the 1980s, the Commission, now under the presidency of Jacques Delors, continued to promote this "social face" to European integration. In his now famous *Espace Social Européen* speech of 1986, Delors emphatically argued that the creation and stability of such a vast economic space would be simply unattainable without some harmonisation of social legislation, and that the ultimate aim "must be the creation of a European social area" (Hervey: 21). It is worth noting that in very limited ways, even governments that were opposed to the implicit goals of "Europe's social face," could however accept certain clearly defined intentions. So while Community social policy was to become one of Thatcher's *bêtes noires* (Pinder : 95), even she could not find justification in *not* accepting workplace health and safety regulations by the Community. It was strictly linked, after all, to provisions on the single market which the UK whole-heartedly supported.

A more recent trend has again been marked by lofty goals and intentions which cannot be said to be *completely* justified by economic goals. In addition to promoting health and safety at work, or gender equality, there is now the assertion that jobs should be “intrinsically satisfying” or that the union should promote “lifelong learning” (“Dimensions of Quality in Work”, 2000). The goal is now for Member States to manage their economies in a way which “maximises the potential for full participation [in society] and quality living for all” (COM(2000) 79 final: 8). And even the motto for the Commission’s most recent Social Agenda (2005) is “A *social* Europe in the global economy: jobs and opportunities for all”. It would appear that, at least in intent, the “social” now takes centre stage in its economic surrounding, with an Agenda that seeks to promote job quality, to act on the basis of solidarity, and perhaps more importantly to make Member States take into account the cost inherent in a *lack* of social policy (COM[2005] 33 final: 2).

It would appear, then, that Laura Cram’s assessment of the far-reaching nature of the declarations supporting social policy at the EU level, is correct. The intent is ambitious and fairly clear, and so the only hindrances to its success would best be found in the institutional framework and processes which have been used in an attempt to realise these goals. More than simply trying to improve living and working conditions in the Member States, the Commission has clearly attempted to promote “social policy as a means of promoting a ‘Peoples’ Europe” (Dinan: 421). Having described some of the competing social discourses at play in Europe in section 2.1 above, in an effort to determine whether EU-level social policy is a desirable and practical project; having extracted from this set of competing discourses, the social policy intentions of the

Commission, which is after all the institutional representation of a projected “single” European voice, it is now useful to describe some of the social policy accomplishments achieved by the Union. These achievements can all be understood as having fallen under the umbrella of the Community Method of governance, and are the focus of the following section.

2.3 Social Policy Development in the EU : In/Action

2.3.1 The 1950s to the 1980s : Benign Neglect and Intergovernmentalism

In very basic terms, the majority of social policy provision in the Community, fell under articles 117-128 of the Treaty of Rome. Art. 119 sought to promote equality between men and women in the work place. Art. 117 called for commitment on the part of the signatory States to promote an improved standard of living for workers, Art. 118 asked for co-operation in the field of employment policy. As Tamara Hervey points out, however, this was best understood as *unemployment* policy, because at this early stage of integration the primary role for the Community-level institutions - at least as understood by the Heads of State – was one of dampening the possible negative effects of market integration. Furthermore Arts. 123-128, laid the foundations for the European Social Fund, structural resources which could be used to pay for Community programmes in some social areas. Following the example of the High Authority in the ECSC, activity was limited to “buying off” the economic losers of integration (Geyer: 23). When the demand for coal diminished in the 1950s and 60s, for example, the High Authority and then Commission, paid for the retraining of workers, and in some cases for the relocation of workers’ families. The prevailing discourse of this period was then based on primarily

neo-liberal doctrine. The growth which was expected from the opening of a single market “with an assumed ‘trickle-down’ effect, would ensure economic and social progress for all, without a need for [real] social intervention in the market” (Hervey: 14). And yet, as described above, the Commission appears to have, in its early days, attempted to push the envelope in terms of how to best pursue social integration.

The Member state response was swift and resounding. Immediately following the 1962 conference on Social Security, and the Commission’s conclusion that the various systems should be harmonised, the Council simply ceased co-operation with the Commission from 1964-1966 on *all* social matters. In addition, the Council of Ministers on Social Affairs simply did not meet. Further compounding the problem, was the “empty chair crisis” of 1965, where the French government under De Gaulle, ceased co-operation with the Community entirely, over Commission President Hallstein’s proposal for an external tariff for the Community once the customs union was completed in 1967. In the first case, the impasse was resolved by means of the Veldkamp Memorandum in 1966. It curtailed the powers of the Commission in the social sphere; a decision upheld by unanimous vote in Council. It knocked the legs from under the Commission’s proactive approach, by arguing that the primary function of Community activity was economic, with social policy being only a minor corollary to the project of economic integration. The Commission would now have to justify *all* of its policy incursions on economic grounds (Cram: 34). The solution to the “empty chair crisis” came in the form of the Luxembourg Compromise, in recognition that “there could be profound disagreement about the development of the EC and that, when there was, a decision could not be thrust upon a dissenting state” (Church and Phinnemore: 35). The right to national

veto would now become the norm in EC negotiations. Considering also that the compromise was reached at the time of the Merger Treaty (1965), there was the possibility that the veto could have actually become enshrined in Community law. This, however, did not occur, with the French government simply accepting the compromise for procedural matters. Both the Memorandum and the Compromise *did* have a profound impact on social policy development, and were not really overturned until the Stuttgart Memorandum of 1983 and the negotiations on the Single European Act of 1986.

While, on first glance, it would appear that the Commission was now thwarted in furthering its social causes, Laura Cram argues that it began to use – and quite effectively – a “softly, softly” approach of social policy development (Cram: 39). Here, the Commission could wield its powers of initiative, of debate and of analysis to study specific issues of social policy, and propose action. Presumably what makes it the “softly, softly” approach is that in times when Member State attitudes toward integration were hostile (France in the 1960s and the UK in the 1980s), the Commission would simply propose further research, and then when a window of opportunity would open (i.e. when the context was conducive to concrete action), it would act. Clearly, an attitude of purposeful opportunism guided Commission activity, and was based on external, internal, economic and national government willingness, as factors which had to be taken together when determining strategy. Moreover, this approach, it appears, is instrumental in current activity by the EU, which must recognise and contend with the “subsidiarity principle”.

One such window of opportunity came in the lead-up to the Hague Summit of 1969. De Gaulle had stepped down as president, replaced with Georges Pompidou, and Germany was now led by the socialist Willy Brandt. There was certainly clear

recognition of the Commission's reduced role in social policy influence, and of its requirement to justify action in social policy with economic goals. In proclaiming that the Community had firmly embarked on economic and monetary union, the Commission had to concede that social policy would now be seen in a "new light" (Annex to Bull. 4-1971: 4) for this very reason. In a similar vein, Commissioner Albert Coppe argued that a "fresh stage" had begun, wherein social policy held a corollary and not a primary focus (Cram: 34). And yet, the Hague Summit marked a return to the integration process, concluding with increased budgetary responsibilities for the European parliament, discussion on the direction for monetary union, and proposed increases to structural funds including the ESF. The Paris Summit of 1972 then built upon this by seeking to better involve management and labour in the development of Community labour and social policy ('social dialogue'), and extending the scope of the ESF so as to soften the economic impacts of competition and internal market reform. The Member State leaders agreed that "economic expansion should not be an end in itself but should lead to improvements in the living and working conditions of the populace" (Falkner: 64).

In concrete terms, the Summit led to the development of the Community's 1974 Social Action Plan, which focused on three main areas of activity: increased involvement of management and labour, attainment of full and better employment and the improvement of living and working conditions within Member States. It marked "the first attempt by the Community to draw up a coherent policy, setting out in a purposeful way the initial practical steps towards the ultimate goal of European Social Union" (Geyer: 36). The Commission over this period created a number of standing committees (on Employment 1970, on Improvement of Living and Working Conditions 1975 and on

Equal Opportunities for Men and Women 1982), which debated, analysed and drafted proposals which again could be used when the so-called windows of opportunity for action presented themselves. Community directives were aimed at using the ESF for vocational training, and at equal treatment of men and women. Of most importance, this last area of action was almost a watershed because of a single ruling by the European Court of Justice. While Art. 119 in the original Treaty on equal pay for equal work had called on member states to implement the principle by 1961, by the 1970s not a single member country had implemented it. In the *Defrenne* case (1975), the Court argued not only that the Commission was charged with *promoting* this article of the Treaty, but moreover that the principle now applied to *all* contracts and negotiations undertaken at the national levels. It was a reach of power which not even the Commission could have anticipated (Falkner: 61), having spent the better part of a decade now, limiting itself to the strictest of interpretations of its own powers, as outlined in the treaties.

This flurry of increased activity eventually fizzled by the late seventies, given the economic pressures caused by the oil crisis, high unemployment and high inflationary trends within the Member States. Institutional weakness at the EC level was marked by a Parliament not even elected until 1979 and by a Council which opted to keep almost all social policy decisions under unanimous voting rules. Thanks mainly to the Veldkamp Memorandum and the sword of Damocles (the national veto), which hung over the head of the commission, directives and pronouncements in the area of social policy were quite limited. In social policy alone, the UK government used its veto three times in the early 1980s (including a veto on an anti-discrimination directive in 1986). Moreover, as the *Defrenne* case exemplifies, even when the Commission did have power to act in a social

area of a member state (under Art. 119), it did not do so. The 1970s saw the addition of three new member states, and now a further pressure would be added in the accessions of Spain, Portugal and Greece (1983) whose combined per capita income was fully half of that of Germany (Geyer: 38). In such a member-state driven environment, based on intergovernmentalism and neo-liberal political ascendancy, it is a wonder that the Community was able to act at all. And yet, its approach of purposeful opportunism would appear to bode well for it, as the advances made in past decades and which continue today, indicate a consistent, albeit incremental, drive toward social policy integration.

2.3.2 The 1980s to 2000 : The SEA, Amsterdam and Beyond

In the 1979 Cassis de Dijon case, the ECJ developed the principle of *mutual recognition*. It argued that every member state had to accept the standards of other member states so long as those standards “did not demonstrate a clear threat to health, safety, the environment or other areas of public interest” (Geyer: 43). The importance of this decision on social policy development may not be clear at first, until coupled with the added development of the subsidiarity principle. Taken in tandem, the Commission could not seek to impose harmonisation of standards in the social arena (opting instead for mutual recognition), nor could it act in a policy area best dealt with at the national or regional levels (subsidiarity). These two principles, then, proscribed the area within which the Commission could act with regard to social policy, and form a backdrop to (limited) social policy development in the proceeding years. Co-ordination, and not harmonisation, would now be the only real method for any future social integration. However, much like the need to justify social action on economic grounds in the 1970s,

the Commission would now behave in a similar fashion by justifying its actions on *efficiency* grounds.

In 1986, a Single European Act was adopted, which renewed a sense that social policy could be dealt with at the European level. The SEA, for example, allowed for majority voting rules (QMV) in Council on all matters related to the health and safety of workers. As mentioned above, the Thatcher government accepted this caveat for the greater prospect of completion of the common market. Incidentally, when the Commission proposed a Working Time Directive (to limit maximum weekly working hours to 48), the UK government rejected it. It was then, however, forced to implement the directive by decision of the ECJ, which argued that it *did* constitute an area of health and safety of workers, and that it was therefore under the jurisdiction of the Commission.

Primarily under the efforts of Jacques Delors, a further boost was given to the social sphere with the adoption in 1989 of a Community Charter of Fundamental Social Rights for Workers. It outlined 12 main themes or areas of protection including, among others, free mobility, equal pay for equal work, protection of children and of the elderly, and improved working and living conditions. It was adopted at the Strasbourg Summit (May 1989), however, as a solemn non-binding declaration as opposed to legislation. Notwithstanding this, the UK government still refused to accept it. At best, argues Falkner, the Charter could be seen as “a ‘statement of principles’ [...] in accordance with existing practice and varying situations in the member states.” (Falkner: 66). And yet there is a sense that the Charter had another purpose, driven as it was by a man who clearly understood the institutional game of integration. Already in 1985 with the failed val Duchesse talks on bringing the social partners into policy development, Delors argued

that he was not disappointed because he saw the entire process as an exercise in “confidence building” (Cram: 39). This is instructive because it furthers the impression that in order to integrate social policy, the EU needed first to promote debate and discussion on the issue. At the same time it needed to structure its social policy proposals in terms of efficiency and in relation to the treaty powers it was limited to. It is then no surprise that the debates surrounding the adoption of the Social charter would cause many Member States to return to the discussion of a Social Protocol in the Maastricht Treaty, with a renewed sense of zeal and mission (Falkner: 86).

The result, at Maastricht, was mixed. On the one hand, the spectre of European social policy “*à la carte*” was raised, by means of the UK and Ireland’s opt-out clause, exempting them from issues pertaining to the social chapter (Burrows: 103). On the other hand, the social discussions initiated by Delors led to the Commission proposing a Social Action Programme and presenting 47 measures to council by the end of 1993, 27 of which required legislation (Nugent: 336). Moreover, without the threat of a UK veto, the logic went, the measures would have a better chance of passing. These measures, however, clearly bore the *imprimatur* of a Commission almost obsessed with forwarding very specific social policy provisions (health and welfare of temporary workers [1991], organisation of working time [1993], safety signs at work [1992], parental leave from work [1996]), perhaps guided by the belief that even incremental social policy integration was integration. Also of symbolic importance at Maastricht, was the explicit competence given to the Commission and Council under Art. 126 to develop “the European dimension in education”. QMV was permitted in this area, but again, only to recommendations and not to binding legislation.

In an atmosphere of great social debate, renewed interest in integration through the common market completion and then through monetary union by 1999, greater constitutionalization within the EU appeared possible. Related to the discourses mentioned earlier, while it was still a time within which economic union mattered, it was also a time of great political change. Within this environment, civic organisations and NGOs were developing at the EU level and interest groups were addressing EU institutions outside of the traditional channels of communication (see below). The social partners now had institutional basis within the Treaty framework of the EU, as did their collective agreements on certain social policy areas related to employment. Following in a tradition of incremental and flexible change, it is no wonder, then, that the Amsterdam Treaty would include a Chapter on Employment. If the social partners (representing the workers and employers within the member states) could agree to co-operation in the field, then it was logical to assume that the Member States could as well. More importantly, the Amsterdam Treaty, occurring after a UK election which saw a Euro-friendly Labour government rise to power, offered a means of removing the opt-out clause and of seeing all the Member States “return to the fold”. All elements of the Maastricht Treaty (including the Social Chapter) were incorporated into the Treaty on European Union (TEU), and equality between men and women was given stronger constitutional provision. So too were matters which related to non-discrimination.

Amsterdam appeared the culmination of the constitutionalizing trend, but was certainly not a *terminus*, last step or destination. Subsequent Social Action Plans were developed, as were Employment strategies and initiatives. The Treaty of Nice (2000) incorporated a Charter of Fundamental Rights and Freedoms of the European Union into

Union law. Mandatory consultation of the ESC is now required on matters of not only agriculture and free mobility, but also of public health policy and of social cohesion. This last element reveals perhaps the most interesting argument in the development of EU social policy. While the early integration process dealt strictly with economic concerns, more recent advances have come in the political (and by extension, social) sphere. In leading the debate and analysis on education, public health, the environment, social cohesion and inclusion, the EU is tackling policy areas once strictly reserved to the Member countries and to the social welfare state. While, as argued above, these developments are warranted and desired on institutional and sociological grounds, one important oversight remains. As Patrick Venturini has described it, “this breathtaking agenda contrasts sharply with the torpor of public opinion, which seems to expect nothing or [...] fear everything from repercussions of European construction in the social field” (Venturini: 104). In its desire to promote the human face of Europe, the EU institutions may have forgotten to relay, explain and describe these advances to the very people and faces which they affect.

2.3.3 The Rudimentary Structures of EU Social Policy : The ESC and the ESF

Before returning to the more normative demands of the discussion on social policy integration, further specific mention should be made of the institutional structures created and used at the EU level, to further this agenda. The European Social Fund and the Economic and Social Committee are very obvious actors in the social policy debate, and so some mention to their development is critical in developing a normative approach to social integration. The picture which emerges is one of great *flexibility*; two structures

which have managed, in varying degrees, to withstand the pressures of intergovernmentalism and internal market creation, as well as the opening of other avenues and policy networks which often challenge their legitimacy. The ESF has in fact, thanks to the Commission and to oversight from Parliament, managed to find a place on the political side of the equation between political and economic concerns, by playing a primary role in Community activity geared toward “fixing” the damage cause by the internal market. And the ESC, often ignored by both Council and the Commission, and side-stepped by civic institutions which can now directly petition the EU level governing bodies, is now recasting itself as a voice at the table for those who might otherwise not have one (Van der Voort: 271).

The ESF is just one of many structural funds at the disposal of the EU which, along with the Regional Development Fund, still makes up only one quarter of the EU annual budget expenditure (Dinan: 230). This limit of 25% is also set by, and cannot be altered except by, a unanimous vote in Council. The consistency of the fund, as Jacqueline Brine argues, stems precisely from its flexibility over the past few decades. Given the pressures of intergovernmentalism, it was possible to use the funds and target them toward specific initiatives which were not seen as stepping on the toes of the Member states. The ESF, she argues, has “unobtrusively operated as an instrument of European policy, *directing*, through its redistributive financial power, policy that is *fundamentally more concerned with social and regional stability* than with growth” (Brine: 115 – my emphasis). This is important for two reasons. In the first case this, the most arguably *economic* of EU tools, has been wielded for *political* (and specifically social) purposes. Secondly, the fact that it is directed at specific social policies, normally

upon initiative of the Commission, indicates a pro-active approach to policy on the part of the EU actors. And finally, the emphasis on flexibility of the Fund, as evidenced by the six major structural changes it has undergone since 1971, point to a very resilient resource in future policy integration.

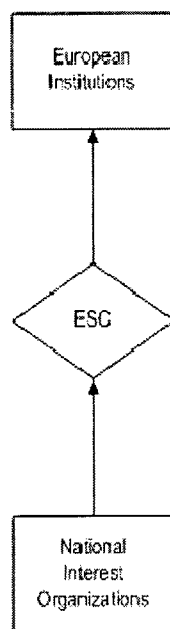
Flexibility has also governed the development of the ESC, although given its corporatist origins, this would not have been an original intent. Here it would be important to distinguish between *positive* and *negative* flexibility, in terms of their effect on the ability of the ESC to play an active role in the social policy debate. It is primarily an advisory body, proposed by the Belgian and Dutch delegations to the negotiations for the Rome Treaty in 1956. They sought to implement at the Community level a corporatist structure consistent with the one which was used in their countries, based on the creation of a forum for dialogue and expertise of workers' and employers' interests, as well as those of other civic organisations. Moreover, in a neo-functionalist spirit, it was thought that in bringing together different interest groups in a structured way, integration and "spill-over" into other fields could be championed (Peterson and Shackleton: 329). The ESC is split evenly into three groups (workers, employers and "various" interests), and they reach decisions on their official recommendations to Council Commission or Parliament, by virtual consensus. Between 1978 and 1990, fully 72% of recommendations were reached by unanimous vote, and the rest by overwhelming majorities (Peterson and Shackleton: 329).

However, given its very limited capacity as a hortative body, and given the fact that even its own internal *procedural rules* have to be approved in Council, or that the Commission and the Council can opt not to even consider or respond to its

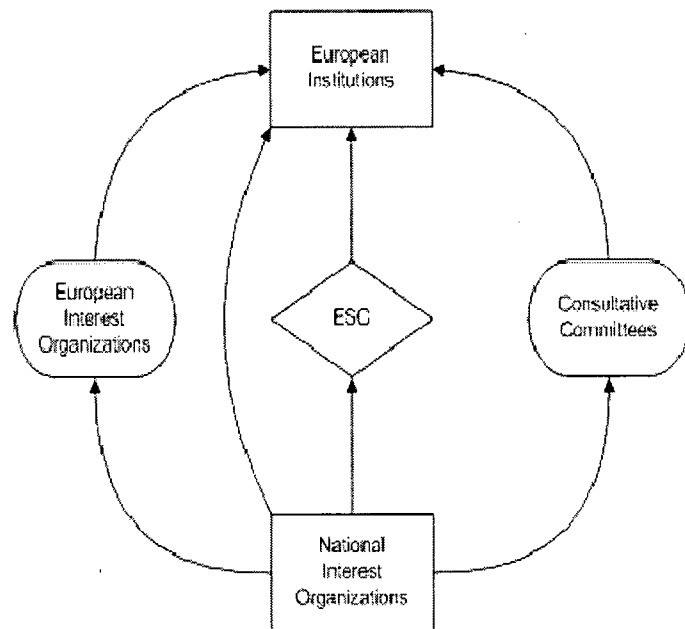
recommendations, it has often been able to offer a very limited amount of consultation (Van der Voort: 337). The diagram below (from Van der Voort: 251) outlines another significant trend in policy network development which has direct impact on the ability of the ESC to play an effective role.

Figure 1. National Interest Groups, European Institutions and the impact of European-level intermediaries

1958: corporatist perspective



1990s: situation as arising from lobbying literature



The Social Protocol agreed to by all the member states (including the UK in 1997), further institutionalised the social dialogue between workers and employers. Art. 118b, added at Maastricht and further developed in the Employment Title VIII at

Amsterdam, paved the way for direct collective bargaining at the EU level between workers and employers, represented primarily by ETUC and UNICE. The social dialogue is now firmly entrenched in EU legislation and is important for several reasons. First, it has severely limited the influence of 2/3 of the members of the ESC (workers and employers), since these two interests can now find a direct voice at the EU level. This would be the key example of *negative* flexibility in policy network development, with respect to its impact on the ESC. At the same time however, it has also limited the discretionary power of the Council. Under the social dialogue provisions, if the social partners, when invited to, arrive at a collective agreement in a policy area, the Council simply votes on it by QMV, without being able to make substantive changes to it.

While this new direct voice for the social partners might - in conjunction with the recent development of European level lobbying groups – appear to threaten the very existence of the ESC, a *positive* aspect of its institutional flexibility still remains. It has now recast itself as a forum within which *broad* ranges of civic interests can be discussed, no longer limiting its discursive activities to economic and trade related interests. It convenes conferences twice yearly to give voice to even smaller interest groups who may otherwise not have the resources to organise at the European level. As a veritable *vox populi*, the ESC now stresses its legitimacy in democratic terms (as an “observatory for the internal market”), rather than in its original, corporatist ones (which saw it as a means of structuring industrial relations at the Community level) (Van der Voort: 270).

2.4 Criteria for a Normative Paradigm in EU Social Policy

Having outlined the “lay of the land” (undercurrents and desirability of EU social policy, the intent of the Commission, and the institutional successes, failures and structures it has experienced and worked with), it is possible to now offer a more nuanced analysis of the central debate I seek to address in this thesis. Flexibility, it would appear, is the trademark element in two primary *instruments* of EU social policy (the ESC and the ESF), as well as in the *approaches* which have been taken to implement policy integration in this field. It stands to reason, then, that any normative approach at analysing and further promoting social policy integration, should have to reflect or even encourage the flexibility already at play here. Social policy at the EU level has been shown to be *desirable* as a positive force in the integration process, by promoting a “peoples’ Europe” and by giving a human face to an otherwise bureaucratic and economic structure. It is *feasible*, given the Treaty provisions and powers accorded to the Union level and given the resources, institutions and policy networks which have developed there. It is also *practical*, given an obvious willingness on the part of the Commission to adopt a “softly, softly approach,” making social policy integration possible, when the right avenues and circumstances become available for it.

As Patrick Venturini has argued, the three functions of EU social policy are legislation, resources allocation and *fonction d’animation*. The first two have been described here to illustrate that the EU *has* been able to act in the area of social policy creation in those regards. The third function, however, is arguably the most important. It is the ability of the Union to engage in a form of catalyst creation; promoting exchanges

of experiences, effective use of benchmarking and the definition of the terms of debate or control of the dominant discourse. The debate, therefore, is no longer about whether more or less legislation is needed in the social sphere, but rather “what form of governance, of social regulation [...] is best suited to the times, the problems and the expectations of the economic and social players and, more generally, of the public” (Venturini: 108). What is needed is a normative tool, approach or lens, with which to better analyse the functioning of European social policy, and to predict or prescribe its future functioning. Moreover, this approach would hopefully be able to tackle the unfortunate reality that despite EU progress in social integration, the public at large is either skeptical, disinterested, or fearful of this process. In fact it now stands to reason that the ability of the EU to continue this process is as dependent on public perception (transparency and openness), as it once was on Member State co-operation.

In determining the most appropriate normative paradigm for social policy integration, when analysing the elements of an ethic of justice, an ethic of care, or a compromise ethic between these two, the following three criteria - broadly characterized here as *responsiveness*, and thus recognizing the role of discourses in EU integration theory - appear appropriate as basic tools for evaluation:

- 1) *Object Responsiveness*: Which normative paradigm best addresses the stated object or objectives of the EU actors with respect to European social policy and the integration thereof? Which theory can be said to most appropriately respond to the object of this discussion, namely social integration, at the

supra-national level? Moreover, given the broad implications and prescriptions which are implicit in any “social model”, which normative approach best addresses those social policy concerns (social exclusion, the environment, intrinsic job satisfaction, etc.) that cannot be said to fall strictly under the purview of the more economic structure of the EU treaties and legal instruments?

- 2) *Subject Responsiveness*: Here, the subject is understood as the *real* subject, actor or beneficiary in any discussion on social policy: the person, individual, community or group to be affected by the social policy in question, or of its integration at a supra-national level. Again here, both a reactive and proactive element can be identified. First, how does the theory in question respond to the social needs, expressed by the interested groups or individuals? But more importantly, as a proactive response to the criticism voiced by Patrick Venturini (section 2.3.2 above), how can this theory be presented to the people of the European Union, in a manner consistent with government *transparency*? In so doing, can the people’s lack of expectation or outright fear of EU incursions in the social policy arena, be allayed or even reversed?
- 3) *Institutional and Operational Responsiveness*: Here the criterion is understood in two manners, reactive and proactive respectively. First, which normative paradigm best deals with the complicated institutional structure in place at the EU level, with its myriad actors, pluralistic policy networks, competing “projects” and conflicting discourses? Second, and proactively, which

paradigm would aid those structures in *producing* quantifiable results with respect to the objects or objectives listed above?

In the following section, I seek to broadly answer the first two of these questions, by evaluating the ethic of justice upon which the Member State models and ultimately EU model are seemingly based. I contrast this paradigm to an ethic of care in the intuitive belief that the latter may in fact provide a framework which better reflects EU social policy intent, and institutional and social realities. Ultimately, an optimal normative framework should allow for social policy integration to further develop within the EU by reflecting a tradition of flexibility, solidarity and community which are integral to European societies. Most importantly, it should reflect the understanding, best described by Jacqueline Brine, that the integration process, in its political iteration is *not* best expressed by a single straightforward progressive goal, but rather as a “woven thread of many threads and with many snags [...] and even the occasional knot” (Brine: 111).

3. THE DEVELOPMENT OF A NORMATIVE FRAMEWORK FOR THE SOCIAL POLICY PROCESS

3.1 Two Principles and Two Practices? Justice vs. Care – An Overview

In the interplay between morality, ethics, public reason, and political action, the debate between proponents of an ethic of justice and an ethic of care has led to a fascinating re-examination of some of the basic tenets which underpin liberal democratic society. Questions of morality in public discourse have been shaped by implicit and explicit boundaries; a dichotomy between morality and politics, between public and private spheres of life, and ultimately by a boundary which delineates *how* questions of morality are to be properly constructed in the public sphere. This last boundary, “the moral point of view boundary,” according to Joan Tronto, has mandated that morality is ideally informed by “depersonalized rational thought,” beyond the realm of local custom and habit, which should be relegated to a “lower form of moral understanding” (Tronto: 9). Since much of the basis for an ethic of care is found in the criticism of an ethic of justice, it is appropriate to outline some basic principles of justice (equality, freedom/autonomy, neutrality/impartiality) and those of care (difference and equity, interdependence, context specificity). Tronto’s concept of the moral point of view boundary points out the moral basis for the above principles, which then inform the practice of justice (rights) and of care (responsibility). In essence, it is an opposing set of moral concepts (attending to rights and fairness versus attending to responsibilities and relationships) which lay at the very heart of the justice/care debate (Kymlicka: 401).

The root of contemporary discussions of justice can be found in John Rawls’ *A Theory of Justice* (1971). In broad terms, the theory argues that: 1) “Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty

for others” (Rawls, 1971: 60); 2) that any inequalities in power, wealth or resources cannot exist unless they are to the absolute benefit of the least well-off members of society; 3) individuals placed in the *original position*, behind the *veil of ignorance*, would undoubtedly agree upon the first two principles. The veil of ignorance demands that individuals eschew their actual contexts (positions of power, wealth, etc.), so that in the original position (a hypothetical construction) their engagement in public reason can specify “at the deepest level the basic moral and political values that are to determine a constitutional democratic government’s relation to its citizens and their relation to one another” (Rawls, 1999: 132). The original position, then, is “designed to enforce the *abstract* right to equal concern and respect, which must be understood as the fundamental concept of Rawls’ “deep theory”” (Dworkin, 1977: 181 – my emphasis). With some European political actors recently advocating the creation of a “core Europe,” by federalist design (Fischer, 1998), this moral conceptualisation, based on public reason, would arguably inform the make-up of such a federation. And yet it seems impossible to reconcile the necessity for abstractedness of the individual, with the very embeddedness and interconnectedness of European individuals and European processes described in Chapter 2.

So justice theorists insist that “there is nothing implausible or inconsistent about requiring us to distance ourselves from particular aims and attachments for the purpose of arriving at principles of justice, while acknowledging that we may to some extent identify with them as we go about living our lives” (Moller-Okin: 246). Aims and attachments are an afterthought or footnote in the real business of “living our lives”. And this is the primary moral point of view boundary which care ethicists contest.

The root of contemporary discussions on care can be found in Carol Gilligan's *In a Different Voice* (1982). While her discussion on psychological development in males and females sought to simply address "the dissonance between psychological *theory* and women's *experience*" (Gilligan, 1986: 207), its findings have much more profound implications. Gilligan's "different voice" is one in which moral action is less related to adherence to abstract principles, than it is to context, affective bonds and concepts of nurturing, care and compassion. The original critiques of her findings rested on the notion that it only furthered an essentialist understanding of care and 'femininity', because it was primarily her female respondents who identified with the values of care and compassion. The "different voice" was really just a "woman's voice," and was then used to reinforce the moral boundary between public and private spheres, relegating women to the latter. This criticism has been flatly rejected by Gilligan, for as she puts it, "no claims [were made] about the origins of these voices or their distribution in a wider population," and so her understanding of care "is neither biologically determined nor unique to women" (Gilligan, 1986: 209).

Yet there is a sense that no matter how explicit she is in her findings, given the myriad approaches (factual, statistical, epistemic, ontological) used by others to discredit them, "the Gilligan debate has taken on a life of its own" (Koggel: 175). And yet, the seminal importance of Gilligan's contribution appears to have been understood and built upon effectively. In the desire to shift the debate to a principally political realm, Joan Tronto has successfully rejected claims of supposed essentialism in an ethic of care. In analysing the philosophies of the Scottish Enlightenment (centred around Hume, Hutcheson and Adams), she has shown that "eighteenth century men exhibited the senses

of connection, moral sensibility, attachment to others and to community that are often attributed to women” (Tronto: 57). The importance of this contribution, I would argue, is two-fold: 1) it helps to erode the dichotomies between public and private and the values traditionally ascribed to each sphere generally, and to women in particular; and 2) it is further historical and philosophical proof of a “connected” and “social” reality in the European context. Moreover, if the constitutive morality of an ethic of justice, and by extension liberal democracy, “requires official neutrality amongst theories of what is valuable in life” (Dworkin, 1978: 77), it is somewhat at odds with the integration project underway in the EU. If scholars are now asking *What Kind of Europe?*, there is an sense that even basic institutional discussions in the EU have an implicit grounding in specific values related to the “good life.” This disconnect between pure adherence to the justice paradigm, and the philosophical and historical (European) realities of a care paradigm, are better evidenced by a brief comparison of their central principles.

Equality is the *sine qua non* of the justice paradigm and *liberal egalitarianism*, and is central not only to Rawls’s theory but also for leading thinkers such as TH Marshall, Ronald Dworkin and others. As a guiding concept in juridical and policy-making matters, it has been used in the post-war era to justify the need for the modern welfare state. This principle, in the social policy context, has been used to bridge the gap between free market libertarianism and Marxist notions of equality. In the nexus between politics and economics, equality would have it that the dictates of the market be left relatively free to operate by its “free hand,” and that corrective measures by government be used to restrict the market only when “it penalizes people for their unchosen circumstances” (Kymlicka: 88). According to Dworkin, the “principal” and “derivative”

implications of equality are respectively : 1) that government treat all citizens with equal concern and respect; 2) that government treat those in its charge equally in the distribution of resource or opportunity (Dworkin, 1978: 62). Equality allows for redistributive measures and requires a political community in which citizens are treated “as equal in an across-the-board way” (Miller: 250). It masks not only competing conceptions of the good life, but also any differences which exist socially or institutionally in a given community. In the European context, this principle is evident in the Charter of Fundamental Rights and in the use of EU structural funds.

Equity, within a care paradigm, instead, requires that *difference* not be glossed over, but be seen as essential. While intuitively, it might be thought that recognising difference would lead to disagreement or conflict, a similar criticism could be made about equality. Under a justice paradigm, public policy is devoted to “meeting the *intrinsic* needs of every member” (Miller: 250). But because these needs are expressed primarily by talk of rights, even justice theorists are forced to concede that:

To stand on one’s right is to distance oneself from those to whom the claim is made; it is to announce, so to speak, a opening of hostilities; and it is to acknowledge that the warmer bonds of kinship, affection and intimacy can no longer hold (Waldron: 373).

Equality (implying *sameness*), may permit us to take into account the needs of others, but it does so by excluding certain institutional or systemic forms of injustice from the debate. An ethic of care, instead, would permit us to understand the needs of others not as we perceive them (through a clearly defined language of rights), but as they relate them. Based on the more holistic principle of equity, “by taking into account how those who are ‘different’ articulate their experiences of difference and disadvantage, an ethic of care can

reveal that it is not necessarily human diversity that is the problem but, rather, social constructs that render differences problematic.” (Hankivsky: 36).

For the purposes of the above distinction, it is important to emphasise that “equality” and “equity” are distinguished here in terms of their ability to deal with myriad human needs, wants and expressions of self. Equality is understood as a principle which reduces various needs, wants, desires of all people, to universalizable indicators, often expressed as rights. For example, if person ‘x’, has been granted a specific social provision, and all other members of the community are also entitled to this specific provision, they are understood to hold equality of status with respect to one another, and in the eyes of this community. Of course, the provision of this right may not ultimately address the specific need of the individual or group in question. Equity, instead, is understood here as equal consideration or concern. For example, if a State were to offer person ‘x’ different provisions than person ‘y’ or ‘z’, but if those provisions, in each case, offered a more appropriate solution to those individual needs and concerns, the resulting policies could be understood as equitable rather than equal. This, albeit slight semantic distinction, would appear to create vastly different policy outcomes. Equity, in contrast to equality, is consistent with other core values within an ethic of care which seek to place higher value on the *particular* (needs for example) rather than on the *universal* (rights for example).

Closely linked with the principle of equality, is that of *freedom* or *autonomy* in the construction of liberal social justice. For Michael Ignatieff, freedom as a moral virtue is a precursor to other virtues, as it is linked with both responsibility and authenticity. If we value the promotion of responsibility in our intimate and connected lives, “then we need

to have the courage to embrace our freedom [which is] the very condition of responsibility, not to mention self-respect, and hence the very basis of an authentic life” (Ignatieff: 112). While some would argue that this necessity for freedom reduces politics and policy to the mediation between conflicting needs and interests, with no view of the common good, Joseph Raz understands the common good to be presupposed by individual freedom to express one’s needs. As he puts it, “the range and nature of common goods determines the options available to individuals in their lives; they determine the channels which define the well-being of individuals” (Raz: 44).

Such focus on freedom and autonomy, according to an ethic of care, dismisses the reality of the *interdependence* of individual lives, and allows for the more dangerous construction of notions of dependency. After all, the New Right has been able to co-opt the language of justice, to promote a “blame the victim mentality”; a belief that “the welfare state wrongly limits the choices [read : freedoms] of the well-off in order to subsidize the irresponsible behaviour of welfare dependants” (Kymlicka: 93). Instead a care ethic, by focusing on the inherent connectedness of individual lives, successfully challenges the New Right by showing that “needs are products of social *relations*, rather than priorities or elements of the individual which demonstrate some lack of character or some deficiency” (Hankivsky: 37). Moreover, as Chris Chriddenden has argued, “we are not rational atomistic units but members of holisms within holisms; the holisms affecting each other in something approximating a meteorological system in complexity and interdependency” (Chriddenden: 101). Interdependence and not the freedom/dependence dyad, then, is another key element of a care ethic.

From the values described above, one more contrast of principles can be identified. While equality and autonomy require a framework that promotes *neutrality* and *impartiality* (and by logical extension *universality*), equity and interdependence require a paradigm which values *context specificity*. Justice as fairness, requires that governments restrain their action to “fairly reflecting preferences,” and only in times when the market cannot reflect those individual preferences (Dworkin, 1978: 77). Justice, after all, is blind, but perhaps this should be understood to also mean that it is blind to the context of individual needs. Context specificity appears to challenge the justice framework by addressing the limitations of abstract, rational thought. Care is not “a cerebral concern, or a character trait, but the concern of living, active humans engaged in the processes of everyday living” (Tronto: 104). It becomes a question, then, of different starting points. Since principles of justice require abstract, impartial application, the framework is best applied by means of a charter of rights (for example) and the application of policies based on the abstract principles described within this charter. Instead context specificity will necessarily start with the understanding that “policy making needs elaborated insights into the way individuals frame their responsibilities *in the context of actual social practices* and how they handle the moral dilemmas that go with the conflicting responsibilities of care for self, others, and the relationship between them” (Sevenhuijsen, 2000: 11).

When context specificity is taken as an integral element in the policy-making process, the resultant policies can be said to be more responsive to the needs, subjective hurts, and desires of individuals and communities. It brings to the fore the understanding that “caring is by its very nature a challenge to the notion that individuals are entirely

autonomous and self-supporting” (Hankivsky: 134). In fact, context may allow us to understand even Rawls’ theory in 1971 – the paragon of the justice approach – as a specific social contract case for treating black Americans decently, in light of their recently acquired civil rights (McLelland: 172). It highlights the fact that even the Scandinavian social welfare model based on citizenship, was constructed not by abstract program design, but to “propel shifts in the focus of mobilization of social reform” (Klausen: 262). In the 1920s this meant understanding the Marxist dilemma and responding with social reforms to include the working classes, and in the 1970s to bring social reform to the contextual demands of women (working hours, family responsibility). In both cases, the context was understood throughout the process of social reform.

In social policy discourses, justification for the championing of social *rights*, has been found in T.H. Marshall’s *Citizenship and Social Class* (1950). According to this theory, citizenship (and by extension social rights) constitutes a form of “belonging together” (Crowley: 174) and requires an entitlement of the individual to equal opportunity and therefore some redistributive measures. Rights-based theories are, again, instrumental, inasmuch as they have no essential value in and of themselves. As Dworkin notes, “the man [sic] at their centre is the man who benefits from others’ compliance, not the man who leads the life of virtue by complying himself” (Dworkin, 1977: 172). It is a sphere of practice in which the emphasis on objective unfairness, which leads to rights-based claims and government action is legitimate only in the interactions of competent adults (Kymlicka: 411). And yet, even some justice theorists admit that :

Legally institutionalized social rights are understood as promoting the alienation of individuals from the community by specifically constituting them in legal and bureaucratic forms as atomistic individuals. The violent abstraction of legal and bureaucratic forms is furthermore seen to reify capitalist social relations by creating and artificial social and psychological distance between clients and the welfare state, further disempowering the already disempowered (Tweedy and Hunt: 307)

In the context of European integration, this last point is an important warning. After all, in a policy and governance environment where the political has often been de-coupled from the economic, and where the latter has actually set the agenda, reification of capitalist social relations through the idea of an atomistic individual is a real danger.

Others, however, would argue, that Marshall's contribution is significant since his theory is seen as an *organic* evolution of citizenship from political to civil, to social rights. Parallels could be drawn with the neo-functionalist discourse discussed in Chapter 2, since "the underlying principle of citizenship is equality of status, and once the principle is grounded in one area, such as the civil sphere, it 'spills over' into other spheres" (Lister: 474). Perhaps the parallel should not be overdrawn, however, since burgeoning EU citizenship debates often fail to take into account one important caveat. Marshall's theory of citizenship (and rights), argues John Crowley, "comprises a national dimension that, while generally tacit, and taken for granted, is not incidental, but in fact crucial to the whole enterprise" (Crowley: 175). As demonstrated earlier, however, the EU is far from being a nation, and intergovernmentalism is alive and well in policy discussions.

An ethic of justice, many care theorists would argue, has actually led many key political actors to view the language of rights with a sense of unease because "rights can

easily turn individuals into passive claimants” (Sevenhuijsen, 2000: 5). While, as noted above, Ignatieff would argue that rights presuppose responsibility, his understanding of responsibility should really be understood as a “duty,” in the Kantian sense. The duty to care “*obliges* us to respond to individuals’ constitutive needs so that those individuals can once again determine and seek their own subjective ends” (Clark-Miller: 116). But the sheer counter-intuitiveness of this statement comes from an understanding of the practice of care and the recognition (as stated in my introduction) that individual needs in a European context are understood as inextricably linked to a community’s needs. When care is understood as an on-going practice, and not as an obligation which a citizen finds in its government’s laws, *responsibility* takes on a very different, and central form. We are responsible, not because of a justice paradigm’s exhortations for fairness and obligation, but because the interconnectedness and contexts described above imply that we simply *are*, throughout the span of our lives, either taken care of or responsible for some person, some relationship some entity, some thing. As Joan Tronto and Berenice Fisher describe it :

On the most general level, we suggest that caring be viewed as a species activity that includes everything that we do to maintain, continue and repair our ‘world’ so that we can live in it as well as possible. That ‘world’ includes our bodies, our selves, and our environment, all of which we seek to interweave in a complex, life-sustaining web (quoted in Tronto: 103).

Responsibility, then, is an integral part of human experience, both as an ethical and political principle and as practice. It rejects the idea that public policy can only be concerned with rectifying unfairness in society, based on competing rights claims made

by “competent adults.” The latter approach, argue care theorists, is both profoundly inadequate and morally impoverished (Hankivsky: 31).

3.2 Two Sides of the Same Coin? Developing a Principled Ethic of Care

If the goal of EU social policy should be to take into account the context of lived human experiences, then it seems difficult to discount principles of justice since they too form a constitutive part of the European experience and of the European welfare states. But are the two paradigms irreconcilable, or do their particular criticisms, each of the other, allow for a compromise between the two. The justice paradigm has been instrumental in the development of modes of governance and applications of public policy in western liberal democracy. And, as Fiona Robinson points out :

The idea of ‘justice’ is neither superficial nor morally expendable; moreover the current global, social, economic, and political context is certainly not one in which questions of justice no longer need to be addressed. Nor is justice irrelevant to an interpersonal, relational view of ethics; indeed the concept of justice, in general, arises out of relational conditions in which most human beings have *the opportunity, the capacity, and for too many, the inclination to treat each other badly* (Robinson: 24 – my emphasis).

In human experience, then, we have the capacity to care, and the capacity to harm. So, as Jeremy Waldron would argue, perhaps the strength of a justice paradigm comes from the position it offers “of fallback and security in case other constitutive elements of a social relationship [love, affection, care, nurturing] ever come apart” (Waldron: 374). Moreover, even care theorists would concede that *parochialism* or caring for individuals only within our “caring circles,” is a danger of this ethic (Tronto: 142). Or, as Alisa Carse

argues, “when all of morality is subsumed under the care we provide to our families, friends, and others in proximity, too much of the world is left out; we are too easily tempted to sexism, racism, xenophobia, homophobia and disregard for future generations” (Carse and Nelson: 29). Of course, an identical danger can be identified in the justice paradigm. The extension of social rights to some individuals, constitutes a form of ‘belonging together’ or membership as per Marshall’s conception. The development of liberal democracy has required a principle of national self-determination, which includes the “solidarity implicit in the significance of the ‘collective self’” (Crowley: 175). Jean-Marie Le Pen’s *Front National*, the British *National Party* or even Italy’s *Alleanza Nazionale*, in emphasising their versions of the “collective self”, would deny rights to migrant workers or immigrants, thereby leading to the same xenophobic and exclusionary potential implicit in a strict adherence to care ethics.

Bridging the divide between justice and care may best be facilitated through Habermasian conceptions of *discourse*, *lifeworld* (here read : context) and *system* (read : institution). As John Tweedy and Alan Hunt argue:

Law should be used to create and structure ‘discursive spaces’ within those institutions of the welfare state responsible for the delivery of social service. These legally created and structured discursive spaces should create more local and participatory dialogue than the macro-level dialogue established by [institutions]. They are conceived as providing an entry point by which the lifeworld can influence the system (Tweedy and Hunt: 311).

After all, even Marshall’s notion of citizenship and “belonging together” requires “constantly renewed tangible evidence of what is common” (Crowley: 174). If context specificity (described above as integral to a care ethic) requires that society take into

account peoples' needs as *they relate* them, modes of governance best meet the needs of individuals if they allow for processes and spaces within which those needs can be expressed. The emphasis on discursive spaces also finds a central place within deliberative democratic theories. Karl Apel's *die ideale Kommunikationsgemeinschaft* (the ideal community of communication) or Jürgen Habermas' "practical discourses," are variations of the communicative or discursive ethics which underpin various iterations of deliberative democracy. It is important to emphasise, however, that both of these theorists found "their most kindred projects of moral philosophy in the Anglo American world" to be the neo-Kantian constructivism of John Rawls and the cognitive-developmental work of Lawrence Kohlberg (Benhabib: 330). As such, heavy emphasis within the deliberative democratic framework is placed on rational expression of needs and norms. The individual in such a paradigm, as Seyla Benhabib describes it, would ask "what norms or institutions would the members of an ideal or real communication community agree to as representing their common interests after engaging in *a special kind of argumentation or conversation?*" (Benhabib: 331 – my emphasis).

Less concerned with a "special kind of argumentation," an ethic of care would instead allow for - and in fact require - discursive or relational spaces within which to express individual needs, concerns or perceived (societal) hurts, as the individual would express them, and not within the more rigid confines of universalizable methods of rational argumentation. More importantly, these discursive spaces would allow for the truly transformative nature of a care ethic to be revealed. As is often noted by care theorists:

In our present culture there is a great ideological [read : neo-classical economic] advantage to gain from keeping care from coming into focus. By not noticing how pervasive and central care is to human life, those who are in positions of power and privilege can continue to ignore and to degrade the activities of care and those who give care. To call attention to care is to raise questions about the adequacy of care in our society. Such an inquiry will lead to a profound rethinking of moral and political life. (Tronto: 111).

The real promise of combining a political ethics of care with a renewed conception of social justice, is that it makes us realise “that [institutional] power conflict as well as ambiguity, contingency and unpredictability are here to stay, but also that we can act ‘as well as possible’ in order to do what needs to be done” (Sevenhuijsen, 1998: 68).

A Principled Ethic of Care, then, would emphasise the transformative potential of care in social policy, while recognising the need for principles of social justice and for promoting the “circumstances of social justice” (Miller: 7). In criticising Rawls’ social contract theory, even Miller admits that “it is simply not reasonable to expect people to renounce or set aside their deeply held convictions so that agreement on principles of justice can be achieved (Miller: 252). Or as Tronto would argue, by thinking concretely about people’s real needs, by evaluating how those needs will be met, and by introducing questions of *what we value* into everyday life, a care ethic helps us “get closer to resolving fundamental questions of justice more than continued abstract discussions about the meaning of justice” ever could (Tronto: 124). Care does not replace justice in a wholesale fashion but rather corrects its faulty, individualist, atomistic ontology; “the liberal-impartial view of persons as generalized, rather than concrete, and the concomitant reliance on abstract moral principles” (Robinson: 25). To draw upon Jaqueline Brine’s metaphor of the European integration process as a woven thread, it is argued that “within a recognized framework [or principled ethic of] care we would see

persons as having rights and as deserving justice [but] should embed this picture [...] in the wider tapestry of human care” (Held: 132).

Olena Hankivsky’s understanding of a Principled Ethic of Care is a good starting point for discussions on European social policy integration, for two reasons. First, it resists assimilationist tendencies of Kymlicka, Moller-Okin and Clark-Miller to subsume care concerns within the justice paradigm. Assimilation “does little to challenge the subordinate position [that] care tends to occupy [historically] in the interplay of the two ethics” (Hankivsky: 14). By extension these other theories, by ignoring care and its subordinate place in political theory and practice, only help to reinforce traditional roles for women, in caring positions and in the private sphere. Instead a compromise ethic should recognise the care and justice as two sides of the same coin, or parts of the same whole, “with the former as a base for the latter, or from which the latter is properly formulated and elaborated” (Kroeger-Mappes: 124). Second, Hankivsky’s analysis follows in the tradition of Deborah Stone’s *Policy Paradox* (1988), which understands ideas (such as care) to be just as important to policy discussions, as other factors are (such as the internal market, globalization, neo-liberalization described in Ch. 2) (Hankivsky: 3). As such, it provides a link between care as a moral-philosophical debate, and care as an operationalizable activity within the context of policy-making and governance. The result is a social policy that is “flexible, creative and responsive” (Hankivsky: 39). While her study is directed toward the Canadian social policy context, the three constitutive elements she outlines for principled care in public policy – contextual sensitivity, responsiveness, and consequences of choice – would also have a transformative effect on the European social integration process.

Contextual sensitivity, as mentioned above, is the *sine qua non* of care ethics. In public policy terms, Hankivsky argues:

As part of our interdependent existence, we can also be thought of as being part of a web of care upon which we all rely throughout our lives. When the human condition is understood in this way, then care becomes accepted as a normal aspect of all forms of social participation and citizenship. Contextual sensitivity reveals to us the social realities of care and situates care solidly within both the public and private spheres. As a result, this perspective allows us to interrogate the ways in which the state, through its policy choices, makes decisions about whether or not to invest in the care of its citizenry. Contextual sensitivity allows us to ask political questions about whose needs are taken care of, under what circumstances, and by whom (Hankivsky: 34).

The result of a contextual approach to the public policy process is that it requires that policy responses be multi-dimensional. If we recognize the continuity of care throughout our lives, we are less likely to see our needs as effectively being met by standing on a specific claim to rights. By valorising and promoting an appreciation for contextuality, simple linear solutions (like the ascription of this or that right, to this or that individual) for complex social problems, are necessarily revealed as inadequate.

Responsiveness, in principled ethic, requires that the policy process and the actors within it, move beyond rudimentary constructs of sympathy and empathy. While some would argue that the original position required “implicitly that we demonstrate empathy (toward different lives) in being able to articulate principles of justice,” (Moller-Okin: 246), responsiveness would involve concrete action for and in support of concrete individuals and communities. Because it emphasises a relational ontology, it would also involve “paying attention to how individual identities, social status, and needs are shaped and constructed through their intersection with a range of private and public, social and

institutional arrangements” (Hankivsky: 34). This, as described above, is explicitly related to a care ethic’s demand that we take into account peoples’ needs as they relate them and not only as we perceive them. It requires a special form of mutual engagement, wholly compatible with the “discursive spaces” described above, which empowers participants to decide what aspects of their lives they wish to have included in the discussion (Hankivsky: 35).

In this crucial aspect, the ethic of care, as mentioned above, adds the possibility of context specificity even to deliberative democratic models, which otherwise could be seen to be lacking in their ability to take into account the plurality of voices and concerns of both care-givers and receivers. While deliberative democratic theory does much to alleviate some of the concerns with traditional forms of liberal democracy (for example the inability of the citizen to actively participate in the process of governing), it too finds its roots in liberal justice theory. As such, the discursive spaces in a deliberative democratic model work only so long as participants behave, deliberate and communicate in a predefined way. To use a rather simplistic example, under a deliberative framework, an individual would be able to express her needs or concerns only within a predetermined context (generally in public, and by means of rational, spoken argumentation, and with other community members judging the validity of the claims solely on the basis of its rational strength). An ethic of care, instead, seeks to reduce the emphasis on rational argumentation as the only justifiable means for expressing individual needs or claims, thus allowing for a more open discursive space within which to address these care needs.

A Principled Ethic of Care, requires that policy actors recognise the *consequences of choice* in the policy process. Because a traditional justice ethic deals with instrumental

value of social justice (as fairness, with little regard for context), it does not always have the capacity to prevent human harm *caused* by certain policies. Instead, by being concerned with the “actual outcomes and practical and material effects on peoples’ lives [in] making certain choices and decisions” (Hankivsky: 38), a principled ethic allows governments and people to judge the effectiveness of social policies not only by the laudable values of social justice they imbibe, but also by the concrete steps they take in addressing structural inequality or subjective harms which social justice theory may overlook. The operationalization of this ethic, argues Hankivsky, would still entail use of traditional procedural and redistributive considerations associated with liberal justice (the ESC and ESF in the European context, for example). However, and more importantly, these traditional considerations would be “enjoined with the realization that people’s needs cannot always be so narrowly defined” (Hankivsky: 39).

Finally, it would appear that the strength of a Principled Ethic of Care rests in its ability to maintain the appeal of principles and norms, while allowing for closer attention to be paid to context and *lived experiences*. In terms of the inherent, and often hidden, power structures and imbalances within a justice paradigm, Hankivsky’s emphasis on the “consequences of choice” – especially when coupled with Tronto’s recognition of the distinct role of the “care receiver” within the care process – appears to offer an important remedy to these imbalances. Joan Tronto outlines how the justice paradigm has helped to perpetuate a devalued position for care, through the latter’s connection with privacy, with emotion and with the “needy.” As she argues, “since our society treats public accomplishment, rationality, and autonomy as worthy qualities, care is devalued insofar as it embodies their opposites.” (Tronto: 117). Instead, with an emphasis on the

“consequences of choice,” the care-receiver is returned to a position of agency within the care process. Care-givers (no longer relegated to the private sphere) and care-receivers (no longer labelled as needy or dependent), are in this way invested with a more complete concept of social citizenship. Not simply “clients” of the welfare state, and not solely limited to expressing their needs in a purely rationalistic and deliberative fashion, members of society with even the most acute need for care (children, the elderly, the disabled, the most vulnerable) are finally given a more central role by a Principled Ethic of Care. A relational understanding of interdependence, which helps to transcend the social justice dyad of “dependence versus autonomy,” allows focus to be placed on the expressed care needs of all members of society. Most importantly, however, it allows for social policy development within that society to be more nuanced and for the extant policies to be far more responsive to the needs of the care-receivers they are meant to address.

3.3 Responsiveness Revisited: A Principled Ethic of Care in the Context of EU Social Policy-making

Before returning to the possibility of operationalizing the Principled Ethic of Care within the context of European social policy integration, I wish to briefly return to the three criteria of responsiveness I outlined in Chapter 2. In terms of *object responsiveness*, I would argue that the Principled Ethic of Care succeeds in meeting this criterion. Compared to a strictly justice paradigm, which could possibly only serve to reinforce the economic tendencies of EU policy, the multi-faceted and multi-dimensional approach of a Principled Ethic of Care, allows for broader social policies (social exclusion,

environmental health, preventive approaches to healthcare) to be effectively addressed. Moreover, compared with a strictly care-based ethic, the principled ethic welcomes policy prescription based on social justice (and therefore reflects the values which underpin all three social welfare models which are currently evident in Europe). It does not however, limit itself to purely instrumental or legalistic measures as a means of achieving true social justice.

In terms of *subject responsiveness*, I again conclude that the principled approach to care, satisfies this criterion. Contextual understanding and consequences of choice would lead to a social policy which is responsive to concrete individuals and not simply abstract ones. Moreover, while social justice theorists would argue that public policy should be geared toward “meeting the intrinsic needs of every member” of society (Miller: 250), it is farcical to assume that this is even remotely possible in a geographical area with a population of over 350 million. On the opposite side of the spectrum, given the potential for latent parochial responses to social problems which are implicit in a strictly care paradigm, the principled ethic allows for flexibility, and allows for groups, through an interactive policy process, to express some of the agreed-upon social needs within those groups (Hankivsky: 33).

Most importantly, because it strikes at the heart of the torpor of public sentiment in the EU which Patrick Venturini described (see Section 2.3.3), I contend that the principled ethic of care is a means for creating the transparency and connection between EU citizen and integration process, which the preamble to the draft constitution itself proposed. As Hankivsky shows, the principled ethic of care promotes “the active participation of citizens (and their self-expressed needs) in social policy development [;]

it prioritizes policy decisions that attend to the complexities of citizens who differ on the basis of gender, race, ability and class, but who are united in their need for care” (Hankivsky: 40). Finally, it is in only in analysing the Open Method of Co-Ordination (OMC) in the following chapter, that I can finally argue how the Principled Ethic of Care, in combination with the discursive spaces which OMC creates, passes the third criterion outlined above; how OMC, guided by a principled care ethic most certainly demonstrates *institutional/operational responsiveness* within the EU social policy context.

4. THE (FUTURE) DEVELOPMENT OF SOCIAL POLICY PRACTICE IN THE EUROPEAN UNION: A PRINCIPLED ETHIC OF CARE AND THE OPEN METHOD OF CO-ORDINATION

Operationalizing a Principled Ethic of Care, within the context of EU social policy-making requires the active participation and co-ordination of many actors. It also requires being able to respond to, contend with, navigate or accommodate the different (though sometimes overlapping) principles of the three primary forms of social welfare states in Europe, as well as the many discourses used to justify, promote or even criticise them. As demonstrated in Chapter 3, and specifically in relation to social policy, the ethic of care would require responsiveness, contextuality, and consequences of (policy) choice to lie at the centre of policy discussions. Previous successes of EU social policy have been determined in instrumental terms (by a specific directive or ECJ ruling) and are thus consistent with an ethic of justice. The relational ontology implicit in an ethic of care, however, would require a different understanding of policy success; an understanding that the social quality of the results (read : policies) entails the quality of the social processes which produced them (de Leonardis: 17).

In Chapter 2, various examples were offered of social policy successes and setbacks which, broadly speaking, fell under the Community Method mode of governance; a mode which is heavily focused on “hard law” (fundamental rights, social rights, workers’ rights) and the vertical distribution of power and competences between EU, member state, and sub-national policy actors. Success or failure of the EU in public policy creation was determined by “the extent of codification of practices, the degree to which practices [were] binding and possibly the degree to which practices are settled or

constitutionalized” (Wincott, 2004: 228). In this narrow understanding, any time that QMV could be extended to areas of social policy (health and safety of workers or gender equality), success was claimed because national particularity and veto power could now be forgotten, in favour of a uniform policy prescription. But for a growing number of EU scholars, it is specifically the hard law, uniform policy which ultimately lacks some legitimacy because it does not provide a “recognition of legitimate diversity within the European Union even in policy areas where strictly national solutions are no longer sufficient” (Scharpf: 126). This small element of the “legitimacy crisis” which has plagued the EU since Maastricht is perhaps the main reason that EU actors now appear to favour the Open Method of Co-Ordination (OMC) as an alternative to the Community Method in policy areas where divergent national prescriptions prevail, but where common action is warranted. OMC, in fact, “seems to bring a breath of fresh air into the mechanisms of common EU action, allowing for a novel way of unfolding the co-ordination of national areas of public action which does not involve formal or full-fledged transfer of competences” (Borras and Jacobsson: 187). It is, however, not entirely a new phenomenon, within the ambit of EU governance and procedures.

Since the efforts of the Delors Commission in the 1980s to bring social policy questions into focus at the EU level by means of policy co-ordination, more recent scholarly debate has focused on the “soft law” applications of informal governance at the EU level; the negotiated approaches which include communications, recommendations, opinions, memoranda, communiqués, codes of conduct and internal rules (de la Porte: 1). Continuity in policy-making approaches can be found between more recent use of these tools or OMC, and Laura Cram’s description of the “softly, softly” approach employed

by the Commission and used to promote co-ordination of national policies, rather than outright harmonisation. Informal governance, exemplified by Delors' "trust building exercises" (on the inclusion of the social partners in EU level policy making for example), pertains to "non- or incompletely codified procedures of interaction and decision between actors, and non publicly enforced routines and relations between actors" (Warleigh: 22). And since the 1990s there appears to be a quasi-institutionalised attempt at informal governance which eschews previous goals of harmonisation of social policy, while at the same time rejecting the predominantly economic policy focus perpetuated by the Community Method.

In past, harmonisation of social policy practice was an assumed end-result of the spill-over effect and neo-functionalism, and was then severely restricted by the Veldkamp Memorandum, the national veto and neo-liberal economic forces which theories of intergovernmentalism perpetuated. The historical evolution of the Community Method has tended to "fuse disparate national and European-level actors within one complex – and hence *opaque* – process" (Wincott, 2004: 234 – my emphasis). And yet, in the very Preamble to its draft constitution, the Union called for a deepening of the democratic and transparent nature of its public life. The Community Method, then, appears to fit like a straight-jacket, focusing only on vertical distribution of powers, and increasingly unable to cope with the non-vertical processes and interactions which occur in its own institutions (see, for example the ESC, figure 1, Chapter 2). The vertical emphasis is only further reinforced by a myopic interpretation of the subsidiarity principle. If instead, emphasis were placed on what Venturini described as "positive subsidiarity" (see Chapter 2), with the Commission making the most of its *fonction d'animation*, the straight-jacket

of the Community Method could be loosened, so as to allow for a policy-making process that is more robust and nuanced, and less focused on simply attaining more areas of social policy to place under the rubric of QMV and “hard law”.

So, an emphasis on the desired quality of the policy-making process, on its transparency instead of opaqueness, on positive subsidiarity, and on co-ordination rather than harmonisation of social policies, provides the backdrop for the current interest (both political and academic) to focus on “soft law” generally, and on the Open Method of Co-Ordination specifically. OMC was first developed out of the negotiations in the lead-up to Maastricht. A co-operative tool, it was mentioned in Articles 98-104, in specific relation to the co-ordination of economic policy, and then used again at Amsterdam to tackle employment policy (Articles 125-128). A version of it was also used in the European Employment Strategy in the 1990s. Here, the method was used because in a desire to tackle unemployment in Europe, and in recognition of the common pressures posed by the common currency and market integration, a EU response was desired and warranted. The process, which features a heavy use of co-ordination in a traditional intergovernmental sense, was then given the generic name of Open Method of Co-Ordination at the Lisbon Summit in 2000. Even the European Council, stalwart of competing national interests, recognised the usefulness of the process in achieving “greater convergence towards main EU goals” in social policy, by fixing guidelines, and translating these guidelines into national and regional policies, by “taking into account national and regional differences” (European Council, SN100/00, 2000: 12).

More importantly, the European Commission, in Chapter 3 of its Social Policy Agenda (2000), stressed that a principal aim of future joint efforts should be “the

promotion of quality” and a recognition of the fact that “growth is not an end in itself but essentially a means to achieving a better standard of living for all” (European Commission, COM[2000]379 final: 13). For the Commission, six different tools could be used to promote this goal: OMC, legislation, the Social Dialogue, the ESF, gender mainstreaming, further policy research (European Commission, COM(2000)379 final: 15). OMC, incidentally, is listed first, among all of these options. And this is perhaps reflective of a recognition of the effectiveness of such an approach. After some initial reluctance, it seems, “the Commission seems to have adapted to the OMC, perhaps after recognizing its clear family resemblance to the kinds of ‘soft law’ projects it has deployed to ‘soften up’ the member states” in past (Wincott, 2004: 233). As a “carrot instead of stick” approach, and in stark contrast to a strict Community Method approach, OMC is understood as an efficient policy-making tool inasmuch as it helps to create “structure and regular repetition over time”; is a ‘confidence-building mechanism’; and helps to create “trust and co-operative orientations” in the policy process (Tsakatika: 9). In effect it is almost an institutionalised, semi-codified understanding of the very processes which Jacques Delors initiated in the Val Duchesse talks of the 1980s.

Myrto Tsakatika offers an “ideal type” description of OMC which outlines the following characteristics of this method:

- 1) member states periodically set common policy guidelines, sometimes specific objectives, which are then measured with specific indicators and benchmarks.

- 2) these guidelines and benchmarks are incorporated into national action plans, which member states are to create with the input of national parliaments, experts, sub-national or regional authorities, civil society, the social partners, “in accordance with the particular institutional, social, legal and political characteristics of each national reality” (Tsakatika: 3).
- 3) the Commission is charged with the promotion of periodic, public, joint evaluation procedures, meant to offer comparison between the member states and the “best performers” in the Union and in the world.
- 4) A high level Council/Commission Committee is set up to oversee the co-ordination of the specific policy area to be addressed, forming a central axis around which consultation (of the myriad social policy actors) occurs.
- 5) The purpose of the public joint evaluation is to create a space in which it is possible to learn from each other, exchange concrete examples of best practice in the given policy area and thus to provide incentive for member states to achieve common goals.

At first glance, these five elements would appear to offer a method which addresses the lack of legitimacy, described by Fritz Scharpf above, suffered by the Community Method. The OMC is a legitimate tool because it respects the subsidiarity principle while at the same time not being crippled by it. Benchmarking, the current buzz word in EU governance talk, coupled with reciprocal learning processes, allows national action plans

to be effected under multi-level “surveillance” of sorts. At the heart of this process is a desire to develop “organised and reciprocal learning processes to cope with key stakes of a rapidly changing world” (de la Porte, Pochet and Room: 294).

Still in its nascent stages, OMC is difficult to evaluate in terms of its policy successes at the EU level, if success is only to be measured in terms of established advances in actual social policy and the quantifiable effects of these policies. Since 2000, the tool has been used in efforts to bring the Union together in tackling social exclusion. National Action plans have been developed, national reports are available online to the public at large, and findings are open to discussion. But even without concrete policy changes, there appears to be broad consensus that as a mode of governance, OMC has been the quickest to spread in policy circles because it places much greater emphasis on process rather than substance” (Tsakatika: 4). Already in 2005, the Commission sought to solidify and streamline OMC by extending its uses to matters concerning national pension reform and long-term care, as well as offering a greater role to the European Parliament in the co-ordination procedures (European Commission, COM(2005)final 706: 9). Furthermore, the *Draft Treaty Establishing a Constitution for Europe* made some reference to co-ordination procedures in Articles III-71, 100 and 107, in reference to economic, employment and social policy respectively. While it is mentioned in the treaty, for many it was hardly given the robust endorsement and full-blown constitutional status it deserved (Trubeck and Trubeck: 354).

There is a very clear sense, however, that even in its infancy, OMC provides a procedural means of tackling a long standing EU policy debate. In past, discussions have revolved around the issue of how to “find a feasible balance between the need to respect

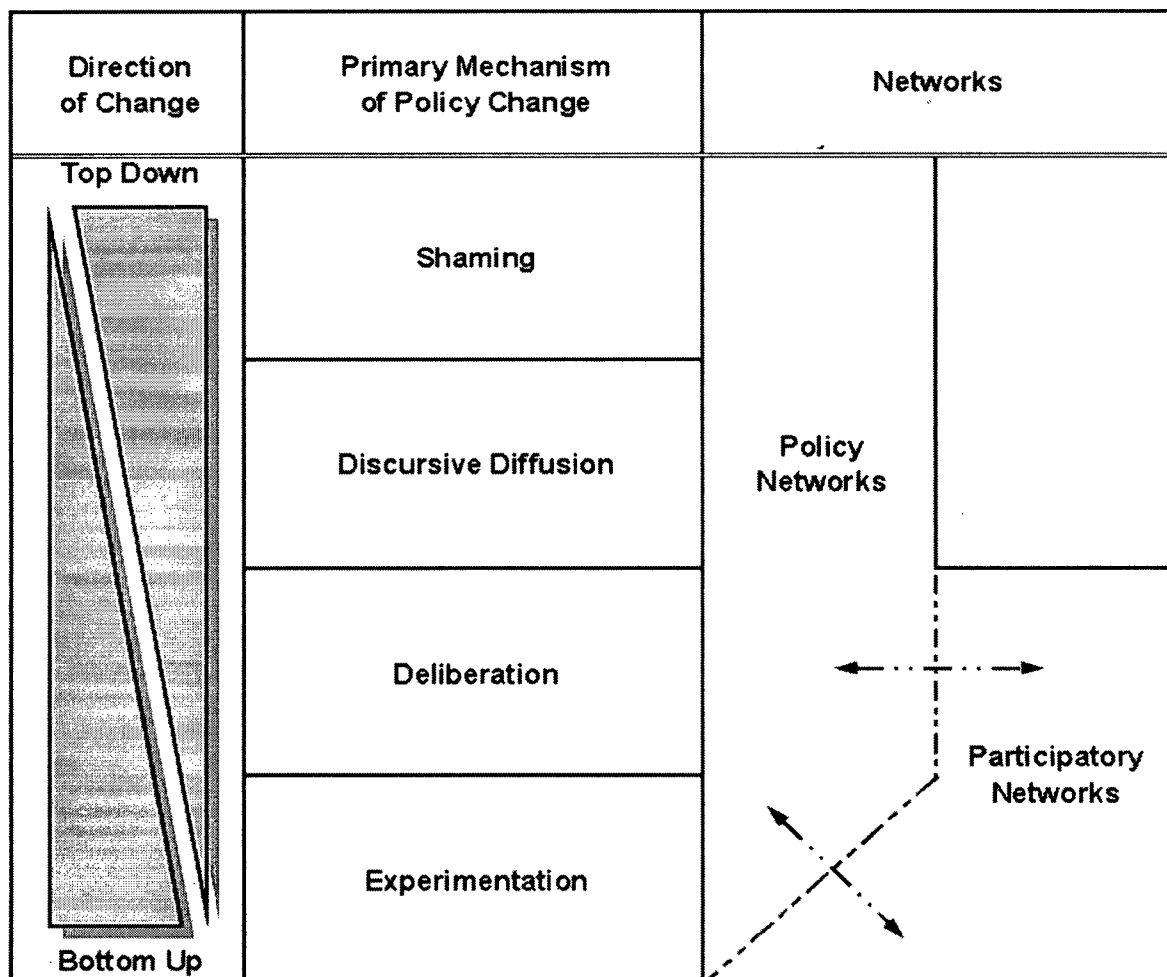
diversity among member states, and the unity – and meaning – of common EU action. By focusing on process flexibility rather than macro-institutional flexibility, the open method of co-ordination is a practically oriented policy instrument that provides very concrete mechanisms in order to address the balance” (Borras and Jacobsson: 186). If the “meaning” of EU common action is found in a principled ethic of care, which I have proposed to be the more appropriate of the two paradigms analysed, then the practice of EU action would function well within procedures which promote the relational ontology that an ethic of care emphasises.

The Principled Ethic of Care was shown to be responsive to the expressed intent of EU (and specifically the Commission) actors, as well as to the people affected by EU social policy, because this paradigm requires the participation of both the givers and receivers of “care”. Institutionally, the Principled Ethic of Care, operationalized by OMC in the European context, offers a means of *institutional/operational responsiveness* as well. As my discussion of the ESC demonstrated (Chapter 2), original corporatist intentions which imagined the Union in terms modelled upon structures of national welfare states, no longer seem appropriate in dealing with the complicated web of policy actors at the EU level. OMC provides a “fully de-centralised approach” in which the Union, Member States, regional and local-level organisations, social partners and civil society, “will be actively involved, using variable forms of partnership” (European Council, SN100/00, 2000: 13). In this sense, it eschews the rigidity of the Community Method in favour of “suppleness” and “malleability”. The first relates to the spatial dimension and the manner in which the vertical processes are decentralised while the second refers to a more temporal concern, allowing latitude for countries to determine

how quickly or slowly to implement change (de la Porte, Pochet and Room: 303). In this sense, it multi-dimensionalizes a previously uni-dimensional (and linear) social policy-making procedure.

In fact, it is the very openness of OMC which provides for an effective relationship with the Principled Ethic of Care. In terms of policy creation and policy change, the OMC in action is best described by David and Louise Trubeck in the following diagram (from Trubeck and Trubeck: 360).

Figure 2. Policy processes within the Open Method of Co-Ordination



This model is somewhat reflective of Ota de Leonardis' "sandwich approach" description of EU social policy, where she recognises the social quality of the *process* as resting within the dense interplay between top-down and bottom up forces of action (de Leonardis: 17). The openness of the model, and specifically the publicness of its actions offers a means of addressing certain European realities. The torpor of public sentiment described by Venturini (see Ch. 2), is resolved in a number of ways by this approach. First, by opening the process to a myriad of interested parties through "variable modes of participation," the public has more direct access to the policy-making process. Secondly, and more related to national-level politics, OMC would make scape-goating of the Union by national actors more difficult to do. Since National Action Plans are made public, and based on criteria and benchmarks agreed upon by all member states, citizens have a clearer means of comparing different policy approaches. Domestic political leaders, "would no longer be able to rely on the relative ignorance of their population regarding practices elsewhere: they would, instead, need to justify their own performance by comparison with best practice in other countries" (de la Porte, Pochet and Room: 302).

The top-down elements of the diagram shown above, offer a 'soft law' alternative to many of the top-down 'hard law' features of the Community Method. *Shaming*, in its simplest understanding, simulates a form of peer pressure, where after benchmarks are agreed upon, those member states who do not actively seek to apply can be criticized by the Commission, other member states, or as mentioned above, by the citizens of the member states in question. More fruitful in terms of social policy orientation, however, is the act of *discursive diffusion* through mimesis. Benchmarks, even in their vaguest of iterations help to create a common policy language. And then, "as policy makers begin to

take these concepts and indicators on board, adopting them as their own way of organising reality, they tend to shift policy orientation” (Trubeck and Trubeck: 357). Mimesis, in this context, allows for the diffusion of models and approaches (related to a specific task – pensions, welfare reform, re-employment strategies) used in other contexts, to be used as a blueprint which can be adapted in other contexts, and without the expense of further policy experimentation *in situ*. In a sense, this provides an attractive and cost efficient method for adhering to the *consequences of choice* element of Hankivsky’s Principled Ethic of Care. Here the consequences of a myriad of policy actions are analysed (qualitatively and quantitatively, using common tools of analysis), and the effects are made public, easily compared and contrasted with other policy choices, and then the results or effects of the policies are deliberated upon.

But perhaps the most novel elements of the OMC come from the bottom-up forces it allows for. While benchmarking may be thought of as exclusively a top-down force, nothing within the open structure of OMC would prevent civil society or sub-national actors from helping to “tweak” those benchmarks. Bottom-up benchmarking, according to some, is governed by “a variety of quality assurance policies and the dissemination of findings in order to improve performance.” (de la Porte, Pochet and Room: 292). Member states may engage in policy *experimentation*, so as to address a particular social need. This process can be open to participatory networks (civil society), either through national processes or EU ones (the ESC, EU-level interest groups, etc.), and can be guided by benchmarks set by all Member States and guided by the *fonction d’animation* which the Commission wields. However, it is because of the processes of *deliberation*, that those benchmarks can themselves be evaluated and modified.

Deliberative structures, and the horizontal opening of the EU social policy process, is precisely what makes OMC at once traditional and novel. OMC finds a certain continuity in the soft law, deliberative approaches at consensus and confidence building employed even under the regulatory demands of the Community Method. But it is also novel inasmuch as it represents a quasi-institutionalised validation of those early informal efforts. It provides a policy making structure which creates the “discursive spaces” called for by John Tweedy and Alan Hunt (see Ch. 3). As they rightly point out, in a social policy context, one “contentious issue has been whether social rights have the capacity to transcend the individualism of rights in such a way as to be truly ‘social’ rights” (Tweedy and Hunt: 290). The discursive spaces they advocate are clearly evident in OMC, so that when social rights or EU social policy is co-ordinated it could be thought of as truly social. Moreover, since most care theorists would focus on the necessity for a relational ontology, here too, the deliberation which is both demanded and fostered by OMC, would further recognise the interconnected nature of policy actors, citizens, governments, Eurocrats, NGOs, all in pursuit of effective social policy.

The Open Method of Co-Ordination is not, however, without its detractors. Even those who recognise the benefits of policy learning which deliberative spaces promote, admit that it might also have the potential of being nothing more than an empty shell, a perfunctory bureaucratic act, or worse, merely “a beauty contest of an exercise in statistics” (Borras and Jacobsson: 195). Noémi Lendvai, for example, points to the difficulty in applying many European benchmarks of the Social Agenda to a post-communist context. For most of the ten new Member States, “the discourse on social exclusion comes onto the agenda before a poverty discourse could have evolved; the

workfare agenda comes in before [these countries] developed a strong sense of social citizenship; they face 'third way' issues before [having explored] in any meaningful way the first two" (Lendvai: 3). As such, even in an atmosphere of policy learning, many of these terms are almost indigestible or at the very least incomprehensible to some policy contexts. But also, there is the belief that OMC can really only ever aspire to "carrot status" without ever wielding an effective stick. More importantly, perhaps, the real test of the effectiveness of the Open Method will rest in its ability to be truly reflective of the diversity of voices and social needs of European citizens.

The procedure would fail, for example, if it only served to entrench the access of privileged or select interest groups. The first official reports for the OMC on Social Inclusion were released in September of 2006. All national reports are available online and therefore accessible by all citizens and interested parties. Should discussion about the benchmarks used, the best practices found, and the structures of OMC begin to appear in public discourse in the years to come, and in subsequent social policy projects, then it could be argued that this new method, as a structure and a practice, might have captured the imagination of an otherwise disenchanted or quasi-disenfranchised European public.

Though the scope of this paper does not allow for a fair assessment of the compromise solutions offered by some authors to address the limitations of OMC, brief mention should be made of several such proposals. Fritz Scharpf appears to offer a bridge between the traditional Community Method and OMC by suggesting the adoption of *framework directives* in social policy. Currently these directives are limited to subsections *a* through *i* of Art. 137 TEC, pertaining to employment related policy. They might eventually be extended to subsections *j* and *k*, on "social exclusion" and

“modernisation of social protection systems,” respectively. Though framework directives are often vague in their wording, they would provide legally binding constraints on member states, compelling them to participate in OMC, thus reinforcing the vertical power dimension of an otherwise primarily horizontal process (Scharpf: 128). This one proposal is compelling also, given the current renewed interest in constitutional talks under the German Presidency of 2007. In the same way that an ethic of justice cannot be completely subsumed by an ethic of care, the Community Method cannot be replaced wholesale by open co-ordination.

In her understanding of care, for example, Christine Koggel, suggests the creation of positive rights which are in addition to the traditional liberal promotion of welfare redistribution or rights to education. Such positive rights, she argues, “assess the impact of policies, both current and proposed, on members or disadvantaged groups and do so in the context of particular social practices and political conditions” (Koggel: 205). Scharpf’s suggestion of the use of framework directives, like Koggel’s promotion of positive rights, allows for the most transformative elements of OMC to be maintained. Member States could “design solutions to fit their specific conditions and preferences, and any recommendations addressed to them [by the European level] would be ‘contextualised’ by reference to these conditions” (Scharpf: 129). David and Louise Trubeck also see the possibility of this happening by bringing together the Charter of Fundamental Rights and OMC. As they argue, “the rights themselves could function like guidelines, and efforts might be made to translate them into specific benchmarks, measure progress through common indicators, and encourage experimentation and deliberation on ways to ensure fidelity to the norms” (Trubeck and Trubeck: 363). And

finally, even the High Level Group, created after the Lisbon Summit to tackle social exclusion, has suggested that the ESF (a hallmark of the Community Method in social policy) be more policy driven and de-centralised, used to address *specific* National Action Plans developed within the parameters of agreed upon EU goals (Report of the High Level Group: 73).

An ethic of justice and an ethic of care, at a normative level, can be combined in a Principled Ethic of Care to provide the most responsive paradigm with which to deal with social policy matters; a paradigm which manages to emphasise the truly transformative potential of care ethics. Similarly, the Open Method of Co-Ordination in combination with some elements of the traditional Community Method, would promote a mode of social policy governance that is responsive to the intent, institutions and people affected by the co-ordinated EU social policies. OMC provides for discursive spaces of deliberation and policy learning, and for Marshall's requirement of "constantly renewed evidence of what is common." It provides for continuity with informal methods used throughout the integration process, and for a pro-active interpretation of the subsidiarity principle. And ultimately it provides for a social policy-making process which offers context specificity, subject responsiveness, and an open and transparent evaluation of the consequences of policy choice. It is no wonder, then, that even in the face of - albeit minor - criticism, the Open Method of Co-Ordination is considered the best hope to date for advancing social policy in the European Union (Scharpf: 121).

5. CONCLUSIONS

In analysing the recent failure of the Draft Treaty to bring full circle the process of European integration, Yves Mény commented that:

for some time the European creature is condemned to ambivalence: it is not yet a state, but much more than an international organization; not yet a federation but more than a simple confederation of nation-states; not yet a united political body, but bound together by a strong mutual commitment to a Charter of Fundamental Rights; and it will not have a full-fledged constitution, but it is working to approve a foundational document that has most of the traditional attributes of a constitution (Mény: 57)

And it is perhaps from its very ambivalence, that the European Union has generated such lively policy and governance debates. While in the past, the emphasis of these studies focused on “how much” Europeanization was appropriate (expanding and deepening the EU), scholars such as Tsoukalis now focus on “what kind of Europe” is desired and developing. This qualitative question allows for in-depth study of the normative underpinnings which have guided or might in future guide the integration process.

The purpose of this study has been to analyse an element of European integration which, due to the historical de-coupling of economic and political concerns, has perhaps been undervalued in EU governance. Social policy, historically found its locus in the welfare states which provided redistributive measures to national populations so as to offset or mitigate the negative effects wrought by markets. In an increasingly globalized world, and given the heavy pressures of European market and monetary integration, national and EU-levels have recognised the importance of working to achieve common goals even in the, traditionally national, social spheres. The Community Method,

modelled in large part on national governance instruments, allowed for the Commission to promote a “European model.” Achieving this model – and in particular the social policy implications which it aspired to – was very much limited by national veto, the Veldkamp Memorandum and the subsidiarity principle. And yet, as demonstrated in Chapter 2, the real successes in EU social policy have historically come from the more informal methods of co-operation and dialogue at the EU level. Laura Cram describes it as a “softly, softly approach”. Others also recognise that “the progressive shift from a strictly legalistic approach – that defined the essence of the European social protection topography up to the 1990s – to a more flexible “soft law” approach in the last decade of the 20th century – reveals the manner in which this [informal] legal instrument is embedded in and is adapting to the post-modern societal context” (de la Porte: 17).

In terms of social policy development, the Community Method finds its moral bearings within an ethic of justice paradigm, focused as it is on individual rights, redistributive measures and an understanding of “justice as fairness”. In Chapter 3, I sought to describe some of the normative principles which underline the liberal notions of social justice; principles which breathed life into the national welfare states which the EU has been seeking to co-ordinate over the past half century. In contrast to this normative model, the ethic of care has offered a fascinating critique of the traditional liberal rights and justice ontology. By focusing on equity (with an acknowledgement of the differences of human experience) instead of equality, interdependence instead of autonomy, and contextuality instead of impartiality, the ethic of care offers a relational ontology which appears to be more aligned with the *Oeffentlichkeit* (publicness) of European socio-political practice. In analysing the normative paradigm which has traditionally guided

European social policy-making, I contend that the *context specificity, responsiveness* and genuine understanding of the *consequences of (policy) choice*, make a Principled Ethic of Care the most appropriate normative paradigm for EU social policy action. Far from rejecting all elements of the ethic of justice, this principled ethic simply rejects the highly atomised nature of the “rational liberal bearer of rights”. In so doing, I argue, it also better reflects the social, communal and deliberative elements of European politics and policy-making. Olena Hankivsky likens this approach to a painting. Adding care, she argues, “does not remove the outline of the painting [justice and rights], but rather adds colour, dimension, texture [...] puts things into focus and relief” (Hankivsky: 31).

And if current focus is on qualitative understandings of “what kind of Europe” is desired, and by whom, and for whom, then it is specifically the colour, dimension and texture which should be emphasised. The Open Method of Co-Ordination, as described in Chapter 4, appears to offer a new vehicle for social policy change in the EU. Building on traditions already at work in the integration process in past, it provides the means of formalizing trust and confidence-building methods which European actors (from Monnet to Delors) have used. The openness of the method stems from its emphasis on horizontal networks, and on bottom-up possibilities for policy change and co-ordination. The discursive spaces it helps to foster, are reflective of the fundamental principle which guided even Jean Monnet in helping Europe to take its first steps toward integration. In his early years as a cognac salesman, it is noted, he realised the importance and effectiveness of “buttonholing,” of direct engagement and discourse, dogged and persistent interaction. Step-by-step and methodically, the success of his family’s business was built in this manner, upon the confidence of purchasers as far away as Canada and

the US. For Monnet, this approach was then translated into his diplomatic efforts with Western European leaders who only later considered him a purveyor of radical, but actually very sensible, ideas (Remak: 65).

Whereas the Community Method, which sprang from these initial steps, allowed for early integration to be conducted behind closed doors - thus fostering the disenchantment of vast swaths of the European population - OMC restores the possibility for more public participation. The key to bottom-up policy change, in fact, requires public scrutiny. Not only does this new method bring attention to the technical means that neighbouring countries use for the delivery of social policies, but it also generates debate about the very goals and principles they espouse. In neo-functionalist terms "the 'spill-over' from these technical comparisons into a convergence of social goals would be likely, but in terms of general public debate and sentiment, rather than being confined to the political and administrative leaders directly involved in the management of EU affairs" (de la Porte, Pochet and Room: 305). It would appear to be a model of governance truly reflective of the desire and intent to create a "people's Europe," and of the central role that people, communities and common goals will continue to play in the long process of European integration.

Social policy development in the Union is very much, like Jacqueline Brine's description of the integration process, a thread with many knots. In untangling this thread, though, and through the perceptual lens of the ethic of care, the thread is no longer understood as single, but rather a woven web of multiple and interdependent social relations. The key to understanding the true potential of a "people's Europe," is to recognise this web of myriad actors, discourses, goals and projects, rather than to funnel

them all into the single thread which invariably becomes knotted. A Principled Ethic of Care and the Open Method of Co-Ordination, may in fact be the most appropriate tools with which to further outline the contours, dimension and texture of Jeremy Rifkin's "European dream" or to further answer the "what kind of Europe" question. *Caring*, understood in its normative ethic and in its operationalized form through open co-ordination, would both valorise and foster the socially conscious reality of European political life, and thus go far in addressing the social state of the European Union.

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