



DIALOGUES SOLIDARITY AND CONFLICT

INSTITUTIONALISING SOLIDARITY: A GENUINE CHALLENGE FOR EUROPE

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ABSTRACT: In *Solidarity and Conflict* (Cambridge: Cambridge University Press, 2018), Silvana Sciarra invites us to reflect along with her on how to design European governance so as to ensure participation and support. Is collective bargaining the way forward?

KEYWORDS: solidarity – conflict – collective bargaining – economic governance – *Viking* – collective interests.

I. INTRODUCTION

With her latest book, *Solidarity and Conflict*, Silvana Sciarra provides a most welcome addition to the literature on European social law and governance.¹ The author reflects on social conflicts in a transnational context. She submits that collective bargaining offers the best institutional setting to channel social tensions as well as to enhance support for the European project. While social conflicts are inevitable and most often painful, the interactions and infrastructures needed in response are seen as constituting the essence of a peaceful and united Europe.

In this fairly concise and very well written piece of scholarship, Silvana Sciarra succeeds in articulating a sharp critic of current European social governance through a positive lens. The book is enriching, thought provoking as well as refreshing in that it offers an opportunity to think constructively about social conflict in a transnational context. With a view to entering a *Dialogue* with the author and readership of *Solidarity and Conflict*, this note is structured in two parts. I will first identify the conceptual underpinnings of the book (section II) before inviting further reflections on the centrality of collective bargaining in the author's narrative (section III).

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¹ S. SCIARRA, *Solidarity and Conflict*, Cambridge: Cambridge University Press, 2018.

II. A REMARKABLE PIECE OF SCHOLARSHIP FOR THE CONCEPTUAL APPROACH CHOSEN

The monograph stands out for the theoretical angle adopted. The conceptual approach results from a combination of focus, choice of tone as well as scope of the research.

In terms of focus, the book is centred on “solidarity” at a time when the theme has become crucial for the future of the European Union. Examples of highly topical debates on solidarity range from the difficulty to reform the Common European Asylum System, possibly related to the shape of the Schengen area,² to the negotiations on the Multi-Annual Financial Framework for 2021-2027, including a possible Eurozone specific prong.³

While acknowledging the importance of solidarity towards third-country nationals as well as the need to reflect on economic governance, Silvana Sciarra primarily devotes her attention to tensions “occurring in work organization and in the structure of the workforce”.⁴ Solidarity is defined by reference to “ways in which collective interests emerge and are represented by organized groups at a national and transnational level”.⁵ Instead of mapping out or categorizing social tensions, the author investigates the role of key players. Social partners, as well as instruments of funding, are seen as central to better articulate social tensions and reconnect domestic actors with the European project.

The *tone* of the monograph is purportedly positive and constructive. Silvana Sciarra rejects attempts, often simplistic, to categorically oppose the logics behind European market integration and the construction of a social Europe. She instead invites key stakeholders to embrace the transnational dimension of contemporary labour markets which she understands as a “resource for growth and competitiveness”.⁶

The intimate bond that the author creates between the concepts of “conflicts” and “solidarity”, allows her to acknowledge the deeply divisive effects of austerity measures from the past years while also arguing in favour of strengthening the design of collective bargaining. She argues that in a transnational context, collective bargaining is the best way to respond to the reoccurrence of economic shocks as well as to build stronger social cohesion.

This approach to social tensions is primarily institutional in nature, Silvana Sciarra emphasizes the importance of players and processes instead of engaging in value judgements. This choice of narrative makes it easier for the author to distance herself from

² See for instance: V. MALLET, M. KHAN, *Macron Makes His EU Election Plea to Europe*, in *Financial Times*, 4 March 2019, www.ft.com.

³ As illustrated in some of the latest European Council Conclusions of 13 and 14 December 2018, paras 1 and 6; see further e.g. M. KHAN, *Rescuing the Eurozone Budget*, in *Financial Times*, 11 February 2019, www.ft.com.

⁴ S. SCIARRA, *Solidarity and Conflict*, cit., p. 2.

⁵ *Ibidem*.

⁶ *Ibidem*, p. 3.

literature discussing the relationship between the market and the social from a normative perspective, and often taking a binary approach. It also allows the book to be tainted by the distinctively positive and constructive narrative already mentioned.

This is not to say that the tone is naïve. Silvana Sciarra is critical, if not highly critical, of a number of legal developments affecting European labour law such as the failure of the Open Method of Coordination⁷ or rulings by the Court of Justice of the European Union as in *Viking*.⁸ The author also regrets the side lining of trade unions in the context of European Semester. Nevertheless, a resolute choice is made to addressing problems by moving beyond *status quo* without calling into question the grand scheme of things. She thereby offers a valuable counter narrative to radical and protectionist discourses, that are increasingly frequent in contemporary politics, although they may not be realistic and threaten the stability of the polity.

This powerful choice is supported by the extraordinary *scope of the research*. Silvana Sciarra understands European social law and governance very broadly. She does not seek to specifically circumscribe it by reference, for instance, to a set of given legal instruments adopted at European level. Instead, the approach transcends problems of allocations of competences between the Member States, the European Union, the Council of Europe as well as other layers of relevant stakeholders. The point being that the transnational nature of today's labour markets and limits inherent in existing inter-state solidarities call for a renewed focus on actors at sub-national level, flexible enough to adjust to new transnational settings.

The book therefore touches upon a very broad set of sources ranging from traditional legal norms understood in their sophisticated and multi-layered legal context such as European Union directives, CJEU rulings, domestic constitutions, the Social Charter to numerous soft-law instruments. The author engages with new governance techniques related to the functioning of soft-law in the form of the Europe 2020 strategy or the European Semester, and its well-known Country Specific Recommendations.

This integrated approach is not only justified given the complexity of social questions at European level, it also feeds into the solutions advocated by the author. Silvana Sciarra argues for instance that the central role of social partners in articulating and constructively channelling social conflicts across Europe could be combined with reliance on social governance through funding as suggested by the Barca report for a reformed cohesion policy from 2009.⁹

⁷ As set out, for instance, in the Lisbon Strategy: European Council Presidency Conclusions of 23–24 March 2000.

⁸ Court of Justice, judgment of 11 December 2007, case C-438/05, *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line ABP and OÜ Viking Line Eesti*.

⁹ F. BARCA, *An Agenda for A Reformed Cohesion Policy: A Place-based Approach to Meeting European Union Challenges and Expectations*, Independent Report prepared at the request of Danuta Hübner, Commissioner for Regional Policy, April 2009.

III. REFLECTING ON THE FOUNDATIONAL CONCEPT: THE CENTRALITY OF COLLECTIVE BARGAINING

This decidedly positive, institutional as well as multi-layered approach to enhancing solidarity in Europe calls for a number of remarks. I come back here on some of the assumptions that allow the author to centre her argument on the promises of collective bargaining: the institutional approach to solidarity, collective bargaining in “Western democracies”¹⁰ as a point of reference and the limited references to other forms of representation of interests.

The definition of *solidarity in institutional terms* has the advantage, as noted above, that it allows the author not to engage in a discussion of normative models of solidarity at European level. Such a strength may also constitute a weak point of the book’s narrative. It could be argued that the book fails to offer conceptual clarity on the type of social Europe called for by the author. It could also be noted that the institutional angle adopted, because it does not deeply call into question the current grand design of the European Union on social questions, implies normative support for such a model.

In response, the author expects that key normative choices emerge from a fruitful form of collective dialogue in a transnational context. Systemic change may thereby ensue from the sound operation of the processes of collective bargaining advocated in the book. If that is correct though, much would nevertheless depend on how the representation of interests is organized. This begs the question: What then is the model of collective bargaining on which the book rests?

The monograph indeed places much *faith in the sound functioning of collective bargaining*. Social partners and the processes for their interaction are central to the author’s thesis. A wealth of examples illustrating the ability of social partners to respond to the challenges raised by a transnational economy and labour market are provided. However, the author is not explicit on what the pre-conditions for such collective representation of interests to emerge are; other than for a few references to Western democracies which seems to define the standards of reference.

There is therefore little clarity on the choice of type of collective bargaining that may deliver the expected outcome. One area of concern is the well-known risk that social partners, due to limited membership, do not adequately and fairly represent the diversity of interests at stake. A related point of concern is that, as they are designed to protect their constituencies and the incumbents, social partners may only offer ill-suited structures to think beyond their own horizons as needed to respond to Silvana Sciarra’s call to embrace the transnational nature of today’s economy.

Even if such concerns were overcome, through the change of mindset advocated by the author and to which I expect that specific policies would have to be devoted, the narrative on collective bargaining may have to be adjusted to different cultures and tradi-

¹⁰ See for instance: S. SCIARRA, *Solidarity and Conflict*, cit., pp. 9, 105, 135.

tions of collective bargaining across Europe. The approach to collective bargaining in regimes having been marked by years of soviet communism may for instance be very different from those prevailing in Italy or the Nordic countries.

One way of nuancing these objections to the book's approach, could be to elaborate on concrete suggestions to address the concerns, possibly building on some prongs of the European Pillar of Social Rights recently proclaimed by the three main EU institutions.¹¹ The role of *other forms of representation of collective interests* could also be explored. The European Union legislator has for instance been increasingly often requiring the creation or empowerment of organs at national level, such as equality bodies¹² or non-governmental organizations, designed to support the development of a given EU policy. In link with its institutional approach, the book may also further be related to broader reflections on democratic involvement with the European project.

To conclude, Silvana Sciarra powerfully brings together her thoughts on how to address the crisis of European social law identified in the sub-title of her book. I share the concerns expressed by the author and the sense of urgency in finding ways in which collective interests can be expressed as well as duly represented at national and transnational level. I have much sympathy for the institutional and integrated approach adopted. I also adhere to the call to constructively address the reality of the current transnational economy to which we belong. Yet, I fear that social partners may only constitute one of the highly complex set of actors to which we ought to turn to, and through which change may come. This book is therefore an important contribution to the debate on the future of European social law as much as invitation to further reflect on governance with a view to channelling conflicts, as well as to attracting political support, for engaging with social questions at European level.

¹¹ European Parliament, Council and European Commission, *Solemn Proclamation of the European Pillar of Social Rights*, Gothenburg, 2017.

¹² See for instance the work of the European Network of Equality Bodies, www.equineteurope.org.

