Overviews

Welfare Markets and the Democracy of European Integration

As the latest crisis of financial capitalism which broke out in 2008 in the USA put the European banking sector in turmoil, its rescue by public funding caused public debt to skyrocket in the overwhelming majority of European countries.[1] Since then, the policies of austerity implemented across Europe have strongly targeted the welfare state(s). Of course, countries receiving financial assistance from the so-called "Troika" (the European Central Bank, the European Commission and the International Monetary Fund) have experienced the most radical debasing of their social model as drastic cuts in public spending was a condition for their financial rescue. In Greece and Portugal, this has notably translated into large scale privatization plans which included the sale of companies in the sectors of energy, transport, and post as well as public infrastructures such as ports, railways or motorways. In Italy, 120˙000 school teachers have been laid off since 2008, and public funding of universities has dramatically decreased. Vulnerable economies in Central and Eastern Europe have taken drastic measures; like in Bulgaria, where the budget for hospitals fell by 24 per cent in 2009 with many public hospitals being closed or privatized. 380˙000 lost their right to free healthcare as a result of changes in the Public Health Act adopted in January 2010.[2] In Ireland too, the austerity plan adopted in response to the bank crisis has brought about a degradation of healthcare services and the adoption of a plan for privatization of the sector by 2016. But the debasing of welfare services[3] has not only affected the most vulnerable econo-

[1] This overview expounds, in a shortened and revised version, the main thesis of my recent book *Welfare Markets in Europe. The Democratic Challenge of European Integration*, Basingstoke: Palgrave, 2016. I am grateful to the editors of EP for inviting me to contribute to the on-going debate on a topic of crucial importance for the future of European integration.

[2] D. Hall, *Cuts Watch – Bulgaria*, 23 November 2011, in www.psiru.org.

[3] While recognizing that terminology issues have been part of the political struggles under study, I do not seek to take a position on this matter. The term 'welfare services' has several advantages compared to other notions. It is sufficiently broad to encompass a whole range of services but less bureaucratic than the 'indigenous' notion of services of general interest (SGI) forged in EU law. The notion of welfare services does not reflect any particular culturally biased conception and does not presuppose whether these services are or should be provided by public authorities, the private sector, or mixed organizations and arrangements. Moreover, the term 'welfare' indicates that, traditionally, such services have been a key component of the welfare state in Europe. However, while most authors in the field of social policy and comparative welfare state reform tend to focus on benefits (unemployment benefits and pensions in

mies in Europe. In the UK, a country which is not directly involved in the salvage of the euro, the government has implemented a major plan of austerity since the conservatives came to power in 2010. The viability of the National Health Service has been hotly debated and is cause of much concern, as creeping privatization has been on-going over the past years. The funding of schools is equally problematic as needs increase. Even Germany, the economic hegemon of the European Union, adopted the "package for the future" in June 2010, the largest austerity plan in the post-war period. Similar concerns about the sustainability of public funding of healthcare and education under austerity are being debated. France, under the socialist President Hollande, first resisted austerity. The creation of 60˙000 jobs in the *Education nationale* was a main theme of Francois Hollande's presidential campaign, and the French government has assured that this would not be questioned. In 2014, the government nevertheless adopted a plan foreseeing 50 billion euros cuts in 2015-2017, including 20 billion euros from the funding for healthcare and other social expenses. In Belgium and France, public funding of culture or public broadcasting has been significantly reduced. Besides the consequences of "fiscal consolidation", some problematic aspects in the liberalized network industries have been more salient as the crisis hit societies. The price of energy, in particular, has significantly increased in proportion to stagnating or decreasing wages. Similarly, the affordability of housing has become problematic in many European countries, thus putting pressure on social housing policies.

In a nutshell, in the vast majority of European countries, people have witnessed a significant deterioration of welfare over the past five years or so. This is due mainly to the dramatic decrease of available public resources; but the problematic effects of on-going marketization also raise issues with regard to the quality and affordability of services for citizens. In the face of increased pressure from the markets, international financial institutions, and the European Union to tackle the brutal increase of public debt, EU countries have responded mainly in two ways: cuts in public spending leading to retrenchment and cuts in investments, on the one hand, and the further marketization of funding and/or provision in an increased number of policy sectors, on the other. The creeping privatization of healthcare is certainly one common trend across the continent. But marketization affects most areas, including education and social care. Against this backdrop, the question may be raised: how did we get here?

In order to understand the situation which characterizes welfare in Europe today, one must take a step back and look at the broader developments which have affected welfare services over the past three decades. Welfare services are understood here as an encom-

particular), *Welfare Markets in Europe*, cit., makes a contribution on the issue of services. This is particularly important insofar as the future of the welfare state is arguably perceived as increasingly oriented towards the provision of services as opposed to cash transfers, as the debate on social investment suggests.

passing notion covering all services which are deemed essential with regard to public interest and social cohesion (communications, transport, energy, post, culture, education, health and social care, housing, etc.) provided by either public, private or mixed undertakings. While these services would be defined as *services publics* in French or *öffentliche Daseinsvorsorge* in German, it amalgamates three distinct notions in English; namely the provision of public utilities, services relating to what is understood as the welfare state, and the public sector (run directly by the government). Every term reflects a particular conception of the State, and historically rooted institutional and legal systems ruling the provision of such services.[4] In order to encompass the multinational diversity of welfare services in Europe, a new term has been coined in the EU treaties and law: services of general interest (SGI), which can be further defined as “economic”, “non-economic” or “social”. Political struggles have crystallized in the issue of the definition(s) of such services. In spite of national specificities, the main trend across national boundaries has been a process of marketization; that is a re-commodification through the transformation of social relationships between providers and citizens redefined as customers. This often implied the introduction of competition between providers that pursue profit making. At first sight, the European Union seems to have only a tenuous link with welfare services. Like the bulk of social policy, they remain the prerogative of states, and are thus shaped by national politics and budgets. Yet, as this overview argues, EU integration has acted as a catalyser with regard to the marketization of welfare services. The neoliberal restructuring of capitalist economies occurred at the global level and, translated differently, was filtered by individual national trajectories. Notwithstanding, regional integration in Europe has shaped policy making in the realm of welfare services in significant ways, especially through EU competition law and liberalization directives. In the face of the current crisis, the European Union only provides marginal financial or regulatory support for sustaining quality welfare services, but exerts significant pressure on national governments left with reduced resources due to the enforcement of austerity.

One may look at the marketization of welfare services as a matter epitomizing the tensions between capitalism, democracy, and EU integration at the turn of the 21st century. Regional integration in Europe has strongly disrupted what Maurizio Ferrera called “the boundaries of welfare” by opening national spaces for the purpose of market making while supranational forms of “welfare making” have remained largely embryonic.[5] Thus, the marketization of welfare has continuously generated resistance and contestation from within societies. Such resistance has been mostly expressed at the local and national level. Yet, as relevant policies have increasingly been enforced from the EU level, contentious citizens and organizations have sought to address and influence decision

[4] K. Dyson, *The State tradition in Western Europe*, Colchester: ECPR Press, 2009.

[5] M. Ferrera, *The Boundaries of Welfare. European Integration and the New Spatial Politics of Social Protection*, Oxford: Oxford University Press, 2005.

makers in the EU institutions. The politics of welfare services is therefore an area that shows how social conflict is dealt with in a traditionally technocratic supranational system of governance. The issue of how the European Union deals with contestation over political and social change has crucial implications for its legitimacy as a political order.

This puzzle calls for going beyond established disciplinary boundaries between political economy, neo-institutional approaches to European integration, and the sociology of contentious politics.

The fundamental questions therefore are: what has been the role of the European Union in the marketization of public services? And to what extent has contestation mattered in that regard? To answer this questions in full appears to be too an ambitious task for this short contribution, whose aim is only to sketch the lines of a more general research on both EU policy making in relation with welfare services and the contentious politics surrounding them and to present, in a concise form, its overall results.

To do so, a quick reference to the history of the marketization of welfare since the launch of the Internal Market Programme in the late 1980s until today's era of austerity is in order. In this historical process, three key contentious debates ought to be considered, which occurred in the decade between the mid 1990s and the mid 2000s; namely the debate on the regulation of welfare services at supranational level through an EU framework directive, mobilization against the EU Services Directive adopted in 2006, and the protest campaign against the General Agreement on Trade in Services (GATS) adopted by members of the World Trade Organization (WTO).

The point of departure of the analysis is the seminal distinction introduced by Fritz Scharpf between positive and negative integration, that is particularly useful in order to understand how marketization has become institutionally embedded with European integration. Negative integration implies horizontal integration through the removal of national tariffs and regulations, which are seen as obstacles to the building of a single European economic space; in that sense, it is essentially market-enabling. Positive integration, in contrast, involves the setting up of common policies and instruments at the European level and is geared towards market-correcting. According to Scharpf, negative integration has prevailed over positive integration essentially for institutional reasons. On the one hand, the supremacy and direct effect of European law on the legal order in the member states has led to the constitutionalization of competition law which focuses on market creation through free competition. On the other hand, the strong institutional position of the CJEU and the European Commission, mainly based on their ability to use EU law, has allowed them to fight and win political battles against member states reluctant to market opening.

While recognising the relevance of the institutional approach, it needs to be complemented by a perspective, along the lines of discursive institutionalism[6] which considers the role of politics, and more specifically of contention, discourse and ideas in the debates pertaining to socio-economic policies. The European Union finds itself in an era characterized by a "constraining dissensus" where politicization matters.[7] The continuous strengthening of the European Parliament's legislative competences means that it now provides important channels for contentious politics. Strategically, the European Parliament has consistently asserted itself by stressing its role of representation and transmission of citizens' and civil society's grievances. Thus, politicization of issues related to welfare services can be investigated through three analytical dimensions: the *polarization* between opposed coalitions of actors making claims on marketization policies pertaining to welfare services, the *framing* of the related debates through ideas such as Social Europe, competitiveness, subsidiarity, or democracy, in order to create resonance among public opinions, and the degree and nature of the *responsiveness* from decision makers to such episodes of contestation.

The long term trend since the late 1980s confirms Scharpf's argument that the European Union exhibits a bias towards negative integration and, as far as welfare services are concerned, marketization. The agenda for building the Single Market through liberalization directives has been embedded in the progressive elaboration of primary law in successive treaties, and decisions by the CJEU on the conflicts between national regulation and the protection of general interest, on the one hand, and the construction of a supranational single market through competition law, on the other. Insofar, there has been a clear overlap between integration through the market and integration through law. Yet, treaty provisions as well as case law have often been ambiguous by trying to maintain a balance between (social) regulation and competition, thus leaving crucial decisions to the legislator. The institutional and legal features of the European Union therefore do not have a mechanical or automatic effect on policy making. One needs to look at how political battles have led to the prevailing of marketization over re-regulation at EU level.

The findings on coalition formation in the third contentious episode under scrutiny reveal that the actors critical towards the marketization of welfare services have proved able to form broad, even if loosely coordinated, coalitions. They have achieved this by simultaneously activating various channels for contesting marketization policies at European scale, such as transnational networks of the global justice movement (including international coalitions on NGO contesting global trade policies), the supranational chan-

[6] V.A. SCHMIDT, *Discursive Institutionalism: The Explanatory Power of Ideas and Discourse*, in *Annual Review of Political Science*, 2008, p. 303 *et. seq.*

[7] L. HOOGHE, G. MARKS, *A Postfunctionalist Theory of European Integration: From Permissive Consensus To Constraining Dissensus*, in *British Journal of Political Science*, 2009, p. 1 *et seq.*

nels available in the European Union via the European Trade Union Confederation and political groups in the European Parliament, and domestic channels involving national political parties, parliaments and governments. Regarding EU politics, it appears that co-decision (now the ordinary legislative procedure) which secures a firm involvement of the European Parliament as co-legislator is key to producing outcomes in terms of decision-making. When decision making procedures and accountability patterns are more blurred (like in the case of international agreements such as the GATS at the time), the effectiveness of contestation and even the possibility to assess such effectiveness becomes more difficult. In the case of positive integration, though, the involvement of the European Parliament was not sufficient to secure firm support for a Framework Directive on SGI. Additional institutional factors came into play: not only national institutional diversity hampered coalition formation, but also the entrenched sectorizing of EU policy making. Institutional aspects shaping coalition formation only shed light on one part of politicization. The ways in which the policy issues pertaining to welfare services were politicized through ideas and discourse are closely related to coalition formation and also played a key role with regard to decision makers' responses to contestation.

Regarding framing, the ability of the pro-regulation coalitions to articulate their discourse in an efficient manner has been differentiated. The opponents of the original proposal for an EU directive liberalizing all services including welfare services, a piece also known as the "Bolkestein directive", successfully created a polarization through discourse. They claimed the necessity to defend the possible existence of a "social Europe" against the rampant "neo-liberal Europe". Such framing encompassed more specific elements of discourse such as wage and social dumping or attacks on "public services". By invoking "social Europe", they used a well-established master frame which had been forged in the public debate surrounding EU integration since the 1960s.

The simultaneous debate surrounding a Framework Directive on SGI offers an illustration of how the lack of coherent framing contributes to the failure of a campaign aimed at balancing marketization policies with an agenda for re-regulation at the EU level. The lack of polarization between framing through "general interest" and framing through "the market" weakened considerably the pro-regulation coalition, as a dominant fringe of the social democrats did not want to fully immunize SGI from the logic of competition within the internal market. Along with the idea that SGI were part of the market, the issue was increasingly framed through the idea of subsidiarity. Whether their objective was to promote or, on the contrary, slow down marketization, an increasing number of actors were persuaded that national regulation was more desirable as opposed to a deeper involvement of the EU.

Finally, contestation of the GATS illustrates how politicization can take place in the broader setting of global politics. Interestingly, many civil society organizations or individual activists and politicians were involved in contentious networks concerning the GATS in the first place; in this context they gathered expertise on services liberalization which they were able to use later in the debate over the Services Directive. Insofar, the discursive linkage between the GATS and the Services Directive served to illustrate the idea that the European Union is a "Trojan horse" of the neo-liberal globalization in Europe. The main frame which was opposed to the market – here referred to by the interests of multinational corporations – was that of democracy. The GATS was framed as a threat not only to the publicness of welfare services but more broadly to the regulatory capacity of states; according to the anti-GATS coalition, this was made possible by the undemocratic nature of international trade talks at the WTO. The international campaign backlashed in EU politics as the European Commission was attacked for its double talk on welfare services. Under pressure from the public and the mobilization of local authorities in many EU countries, it ensured that welfare services markets would not be open to international competition; but at the same time, it was still seeking market opening for European companies in developing countries. Protest crystallized on water distribution, an area where private companies' predatory behaviour had led to serious prejudice for deprived people in a number of countries.

Where politicization was effective through the polarization of actors' coalitions and powerful discursive framing, it triggered some responsiveness from decision makers. While the Services Directive was substantially amended (to safeguard the bulk of welfare services), commitments of the European Union to open welfare sectors to international competition through the GATS has remained limited (although it may be argued that this was not only due to contestation). In contrast, the campaign for re-regulating services of general interest through EU legislation has ended in a deadlock and the treaty provision allowing the European Union to do so has remained dead letter until today. The politicization of debates over welfare services at European scale has therefore had an occasional impact. At the same time, when looking at policy making since the key debates of the mid-2000s, it appears that marketization policies have been consistently pursued since then with the revision of sectoral liberalization directives (e.g. in the sectors of postal services or railway transport), efforts to open public procurement to competition both at EU and global scale, and the conclusion of new free trade agreements or a new WTO agreement on services liberalization, the Trade in Services Agreement (TiSA). As the vivid mobilization against the Transatlantic Trade and Investment Partnership (TTIP) shows, the issue of welfare services and public regulatory capacity *vis-à-vis* market liberalization has remained as contentious as ever. Furthermore, the European turn to fiscal discipline in the aftermath of the financial crisis from 2008 has put a crucial additional pressure on the public sources for funding welfare services. In this regard the European Union has played a detrimental role in enforcing stringent rules for deficit reduction while leaving the member states without support for tackling a trade off between financial responsibility and the need to tackle exacerbated needs for welfare services.

To sum up, the European Union acted as a catalyser for the marketization of welfare services partly, but not only, because of its institutional (and legal) features. This echoes the well-established argument that the institutional set up and working of the European Union exhibits a structural asymmetry which favours pro-market forces.[8] Another crucial part of the story, though, is that resistance to marketization could, to a large extent, be contained. Thus, besides an institutional approach to EU policy making, a sociological approach is necessary to explain how EU policies and politics have been conducive of continuous marketization. While the advocates of regulated capitalism (mainly left-wing political parties, associations, NGOs and unions) could occasionally hamper neoliberal policy making, they lost the battle of ideas over the long term, and the marketization agenda could never be stopped or reversed. Thus, it may be argued that the European Union is *inclined* but not *bound* to be neoliberal due to structural factors. The prevailing of pro-market policies is also due to the fundamental political and ideological weakness of the coalitions of actors promoting a more regulated capitalism as a means to foster social cohesion. Today, marketization and austerity are two sides of the same coin. In spite of variation across countries, a general trend is that the lack of public resources to fund welfare services is regarded by European decision makers as a main justification for pushing the marketization of welfare further in a number of sectors including transport, healthcare, social services, or education.

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[8] See F. SCHARPF, *Governing in Europe. Effective and Democratic*?, Oxford: Oxford University Press, 1999; F. SCHARPF, *The Asymmetry of European Integration, or Why the EU Cannot Be a 'Social Market Economy'*, in *Socio-Economic Review*, 2010, p. 211 *et seq.*

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