

# Telling (Social) Europe Differently: Fractures, Discontinuities, and Alternative Trajectories in 70 Years of EU Law

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## Abstract

European Union (EU) integration is political and contingent, yet many legal accounts portray it as a process of steady institutional expansion and individual emancipation. This framing is particularly problematic for the social dimension of integration, which regulates labour and welfare – domains directly linked to democratic participation and the distribution of power and wealth.

This article has therefore two objectives. First, it uses Social Europe to show how *70 Years of EU Law – A Union for Its Citizens*, the volume discussed in this special issue and thus the Commission Legal Service present the history of EU integration indeed as largely legal, institutionally driven, incremental, emancipatory, and narrowly European. Second, the article conversely proposes to place a democratic, constructive, and distributive reflection at the

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centre of how EU integration, including its social dimension, is narrated. The story of the EU and its law should not be told as a unidirectional, legal, institutional, and individually emancipatory progression but through the recognition of fracture, discontinuity, and alternative trajectory. The meaning of EU competences, legal forms and practices, and their distributive consequences emerges and transforms in power struggles that determine which of several plausible meanings becomes law and policy. By revisiting the past, this article highlights the reversibility of these struggles and recovers other ‘plausible worlds’ of EU law in the social field that have not (yet) been realised.

## Keywords

Social Europe – EU Social Policy – EU Law – EU Integration – EU Legal History

## I. Introduction: 70 Years of Fractures, Discontinuities, and Alternative Trajectories

EU integration is political and contingent, yet many legal accounts portray it as a process of steady institutional expansion and individual emancipation,<sup>1</sup> propelled by in particular its Court of Justice of the European Union (CJEU).<sup>2</sup> EU law appears as a source of individual rights while the received narratives downplay the distributive consequences of EU integration.<sup>3</sup> In

<sup>1</sup> Emblematically, Mauro Cappelletti, Monica Secombe and Joseph H.H. Weiler (eds), *Methods, Tools and Institutions. Book 1. Political, Legal and Economic Overview* (Walter de Gruyter 1986); Joseph H.H. Weiler, ‘The Transformation of Europe’, *Yale L.J.* 100 (1991), 2403-2483.

<sup>2</sup> The appearance of incrementality and at times even inevitability is also promoted by the idea of an ‘evolution’ of EU law. Although partially critically, Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (3rd edn, Oxford University Press 2021). See for a contestation in this special issue, Giulia La Torre, ‘The Formation of the EU Legal System’, *HJIL* 86 (2026), 133-166. A more positive take on the usefulness of the notion of ‘evolution’ in historical analyses of law is offered in, e.g., Simon Deakin and Frank Wilkinson, ‘Labour Markets and Legal Evolution’ in: Simon Deakin and Frank Wilkinson (eds), *The Law of the Labour Market: Industrialization, Employment, and Legal Evolution* (Oxford University Press 2005), 1-40 (35).

<sup>3</sup> For a conclusive critique Floris de Witte, ‘Emancipation Through Law?’ in: Loïc Azoulay, Ségolène Barbou des Places and Etienne Pataut (eds), *Constructing the Person in EU Law: Rights, Roles, Identities* (Hart Publishing 2016), 15-34. On the importance of the distributive dimension of EU integration, e.g., Ioannis Kampourakis, ‘Bound by the Economic Constitution: Notes for “Law and Political Economy” in Europe’, *Journal of Law and Political Economy* 1 (2021), 301-332.

70 Years of EU Law – A Union for Its Citizens (70 Years of EU Law, the volume), the volume examined in this special issue, the Commission Legal Service (CLS) tends to reproduce a similar narrative in its historisation of EU integration via law.<sup>4</sup>

This article has two objectives. *First*, it uses the social dimension of EU integration (Social Europe) to show how the CLS presents the history of EU integration indeed as largely legal, institutionally driven, incremental, emancipatory, and narrowly European.<sup>5</sup> This framing is particularly problematic for Social Europe, which regulates labour and welfare – domains directly linked to democratic participation and the distribution of power and wealth.<sup>6</sup> I argue that scholars, practitioners, and citizens – the intended audience of the volume discussed – should contest this narrative if they seek a genuinely democratic, constructive, and distributive reflection on Europe’s future. The past must inform this process: how EU law and its distributive effects have been shaped by past politics is essential for reflecting on its future within a democratic process.

Second, the article proposes to place such democratic, constructive, and distributive reflection at the centre of how EU integration, including its social dimension, is narrated. The story of the EU and its law should not be told as a unidirectional, legal, institutional, and individually emancipatory progression but through the recognition of *fracture, discontinuity, and alternative trajectory*.<sup>7</sup> Fractures here are understood as interruptions revealing the non-linearity of EU-making, and therefore, that under the guise of their contin-

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<sup>4</sup> A similar assessment in Jacob van de Beeten, ‘Festschrift or Fiction? Omissions, Gaps and Blind Spots in 70 Years of EU Law’, *HJIL* 86 (2026), 167-196.

<sup>5</sup> The social dimension of EU integration is discussed in Isabel Galindo Martín et al., ‘Chapter 6 – From an Economic Community to a Union for Its Citizens’ in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (2nd edn, Publications Office of the European Union 2023), 129-152. Another relevant chapter is the discussion of EU citizenship in Jonathan Tomkin and Elisabetta Montaguti, ‘Chapter 4 – EU Citizenship: In the Service of EU Citizens’ in European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (2nd edn, Publications Office of the EU 2023), 96-114. The latter chapter is not discussed in this paper due to space constraints.

<sup>6</sup> See, for instance, the idea of *economic democracy* developed by German labour lawyer Hugo Sinzheimer in the 1930s. Although itself a contested notion, this idea tends to consider collective bargaining by trade unions and employer organisations as a means of democratic expression and decision-making in the economic sphere. On Sinzheimer and economic democracy, e. g., Ruth Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press 2014).

<sup>7</sup> Paolo Mazzotti’s contribution to this special issue expands the enquiry by tracing ‘change’, ‘continuity’, and ‘discontinuity’ within the foundational assumptions of EU law/integration; Paolo Mazzotti, ‘An Archaeology of EU Legal Discourse: The Legal Imagination Between Continuity and Discontinuity’, *HJIL* 86 (2026), 85-131.

uous existence, EU regulatory instruments can serve very different policy purposes at different points in time. These fractures designate the moments where policy development is interrupted and readjusted. Discontinuities mark broader moments of foundational political reorientation in EU integration, and alternative trajectories highlight its unrealised other paths.<sup>8</sup> The meaning of EU competences, legal forms and practices, and their individual and collective distributive consequences often appear and transform in power struggles that determine which of several plausible meanings becomes law and policy.<sup>9</sup> By revisiting the past, this article highlights the reversibility of these struggles and, recovers other ‘plausible worlds’ of EU law in the social field that have not (yet) been realised.<sup>10</sup>

The article proceeds in five steps. Section II analyses the narrative of Social Europe in *70 Years of EU Law*. Section III discusses the interpretative choices underpinning this narrative. Section IV contrasts it with how legal scholars working on EU social policy have conceptualised the field as the main relevant scholarship. Section V develops the article’s main contribution by showing, through the example of Social Europe, how fractures, discontinuities, and alternative trajectories can be mobilised to narrate EU integration differently in a way that provides space for reimagining this process as a democratic, constructive, and distributive site. The section focuses on the European Social Fund (ESF), European social dialogue, and the origins of EU labour law. These examples are respectively understood as fracture, discontinuity, and alternative trajectory in Social Europe. Section VI reflects on how these neglected paths of EU integration provide an alternative account that indeed enables democratic, constructive, and distributive reflection on Europe.

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<sup>8</sup> The concept of ‘alternative trajectory’ is tied to the search for ‘contingency’ in critical legal studies or the history of international law, Robert W. Gordon, ‘Critical Legal Histories’, *Stanford L. Rev.* 36 (1984), 57-125; Ingo Venzke and Kevin Jon Heller, *Contingency in International Law: On the Possibility of Different Legal Histories* (University Press 2021). Yet, as Moyn underlines, research should be aware of ‘plausible’ worlds. Discussing counterfactuals is worthwhile but it is equally worthwhile to note the constraints placed on them, Samuel Moyn, ‘From Situated Freedom to Plausible Worlds’ in: Ingo Venzke and Kevin Jon Heller (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University Press 2021), 517-526. Simon Deakin and Frank Wilkinson bring a similar interest to labour law, Deakin and Wilkinson (n. 2), 35.

<sup>9</sup> Situating EU law into a broader web of societal actors, Antoine Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (Cambridge University Press 2015); Bruno de Witte, ‘Legal Methods for the Study of EU Institutional Practice’, *Eu Const. L. Rev.* 18 (2022), 637-656.

<sup>10</sup> The idea of ‘plausible worlds’ draws from Moyn (n. 8).

## II. The Commission Legal Service's Narrative of Social Europe in *70 Years of EU Law*

This section examines how *70 Years of EU Law* narrates Social Europe. Judging from the volume's introductory summary of EU integration, Social Europe is not the CLS' main concern. This introduction largely confines the EU's social dimension to free movement and non-discrimination,<sup>11</sup> with Title IV of the Charter of Fundamental Rights as the only explicitly social reference among the values linked to Article 2 Treaty on European Union (TEU).<sup>12</sup>

The sixth chapter, *From an Economic Community to a Union for Its Citizens*, offers a more complex account of social integration. It introduces Social Europe through the figure of a young, European woman who moves inside the EU from Helsinki to Lisbon and whose rights to work, non-discrimination, and consumer market participation are secured by EU law.<sup>13</sup> From this narrative, the chapter traces Social Europe by briefly addressing social aspects of free movement, the transformation of EU equality law into a fundamental right, and offering overviews of EU law on labour, vocational training, consumption, food, and health.<sup>14</sup> It is encouraging that the chapter recognises that Social Europe now extends beyond labour to areas such as food or health, a connection often less visible in scholarship. It also acknowledges both the economic origins of the four freedoms and the political character of EU social integration, for example by referring to proposals for future legislation on the right to disconnect, gender equality, and patients' rights.<sup>15</sup>

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<sup>11</sup> Daniel Calleja and Tim Maxian Rusche, 'Introduction' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (2nd edn, Publications Office of the European Union 2023), 15-32 (17-29).

<sup>12</sup> The publication only lists financial regulations setting out the EU's funding mechanisms as expressing the value of 'solidarity'. This may be understood as relating only to financial solidarity among the Member States. In any event, it is a limited vision of solidarity and overlooks the social *acquis* except for EU equality law mentioned as expressing 'equality/non-discrimination'. The EU's social (Title X TFEU) and employment (Title IX TFEU) policy competences are also absent. The list provided is non-exhaustive but an interpretational choice. Friedrich Erlbacher and Herrmann Katarzyna, 'Chapter 1 – Fundamental Values of the European Union: From Principles to Legal Obligations' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (2nd edn, Publications Office of the European Union 2023), 34-57 (55-57).

<sup>13</sup> Galindo Martín et al. (n. 5), 133-134.

<sup>14</sup> Galindo Martín et al. (n. 5), 134-154.

<sup>15</sup> Galindo Martín et al. (n. 5), 134, 155-156.

### III. Interpretational Choice on Social Europe in *70 Years of EU Law*

Despite this more complex account, the CLS' narrative remains consistent with the broader pattern of portraying EU integration as legal, institutionally driven, incremental, emancipatory, and narrowly European. Although this paper touches mainly upon the first characteristics, this third section also points to the narrative's narrow Europeanness as others have forcefully highlighted its flaws in terms of individual trajectories and the collective, eventually discriminatory biases of EU integration.<sup>16</sup>

First, the sixth chapter, like much scholarship discussed in Section IV below, locates the origins of Social Europe in the institutional adoption of the labour and equality law directives of the 1970s,<sup>17</sup> aside from free movement of workers.<sup>18</sup> These directives were adopted on legal bases intended to strengthen the common market, in particular Article 100 Treaty of Rome (EEC). As the CLS notes, the original EEC Treaty appeared not to 'cover standardisation of labour and working conditions as such, only the promotion of the common market'.<sup>19</sup> By identifying *hard labour law* by the Community as the starting point of Social Europe aside free movement, *70 Years of EU Law* nonetheless reproduces a familiar but incomplete trope that overlooks earlier governance mechanisms of Social Europe, such as the European Social Fund, discussed in Section V. 1. below. Although the chapter begins with the individual experience of a young worker, it moreover soon reverts to depicting Social Europe as an institutional process of expansion linking its development primarily to the Commission and the Court.<sup>20</sup>

<sup>16</sup> E. g., Hanna Eklund (ed.), *Colonialism and the EU Legal Order* (Cambridge University Press 2025).

<sup>17</sup> Galindo Martín et al. (n. 5), 138. The relevant 1970s directives related to labour law, occupational health and safety, and equality law, e. g., Directive 75/117/EEC of 10 February 1975 on the Approximation of the Laws of the Member States Relating to the Application of the Principle of Equal Pay for Men and Women, OJ 1975 L 045; Directive 77/187/EEC of 14 February 1977 on the Approximation of the Laws of the Member States Relating to the Safeguarding of Employees' Rights in the Event of Transfers of Undertakings, Businesses or Parts of Businesses'; Directive 80/987/EEC of 20 October 1980 on the Approximation of the Laws of the Member States Relating to the Protection of Employees in the Event of the Insolvency of Their Employer, OJ 1980 L 283; Directive 80/1107/EEC of 27 November 1980 on the Protection of Workers from the Risks Related to Exposure to Chemical, Physical and Biological Agents at Work, OJ 1980 L 327. These and other relevant directives are also cited in (n. 337) in *70 Years of EU Law*. On the scholarly narrative, Section IV below.

<sup>18</sup> Unlike Mazzotti in this special issue (n. 7). I consider free movement to rely on a different logic than Social Europe, i. e., the establishment of markets instead of the offsetting of the effects of their operation.

<sup>19</sup> Galindo Martín et al. (n. 5), 138.

<sup>20</sup> E. g., the discussion of the development of EU labour law by Commission and Court, Galindo Martín et al. (n. 5), 138-140.

Second, the CLS' narrative omits major setbacks in EU social integration, thereby presenting integration as an ever-incremental process. Absent are, for example, the standstill in EU social law in the early 2000s,<sup>21</sup> the curtailment of social and labour rights under EU-led financial assistance during the sovereign debt crisis,<sup>22</sup> and the persistent subordination of social rights to economic freedoms in CJEU case-law.<sup>23</sup> As Paolo Mazzotti also observes in this special issue,<sup>24</sup> wherever the sixth chapter discusses a policy field of Social Europe, it suggests a gradual and inevitable shift from economic origins to a people-centred focus thus obscuring conflict and regression.

Third, EU law is primarily portrayed as an emancipatory source of rights, sidelining its distributive and exclusionary consequences.<sup>25</sup> The opening

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<sup>21</sup> As reflected in Claire Kilpatrick, 'The Roaring 20s for Social Europe. The European Pillar of Social Rights and Burgeoning EU Legislation', *European Review of Labour and Research* 29 (2023), 203-217.

<sup>22</sup> E.g., the special section on the displacement of Social Europe in issue 14(1) of the *European Constitutional Law Review*, published in March 2018, or Claire Kilpatrick, 'Social Europe via EMU: Sovereign Debt, the European Semester and the European Pillar of Social Rights', *Giornale di diritto del lavoro e di relazioni industriali* 160 (2018), 737-759; Francesco Costamagna, 'National Social Spaces as Adjustment Variables in the EMU: A Critical Legal Appraisal', *ELJ* 24 (2018), 163-190; Eftychia Achtsioglou and Michael Doherty, 'There Must Be Some Way Out of Here: The Crisis, Labour Rights and Member States in the Eye of the Storm', *ELJ* 20 (2014), 219-240; Philomila Tsoukala, 'Eurozone Crisis Management and the New Social Europe', *Columbia Journal of European Law* 20 (2013), 31-76; Stefano Giubboni, 'The Rise and Fall of EU Labour Law', *ELJ* 24 (2018), 7-20. To be precise, the sovereign debt crisis is acknowledged in *70 Years of EU Law* but in a fundamentally different perspective: the introduction heralds the EU's response in the creation of centralised banking regulation and the European Stability Mechanism, Calleja and Rusche (n. 11), 18.

<sup>23</sup> Prevalent in CJEU, *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet*, judgement of 18 December 2007, case no. C-341/05, ECLI:EU:C:2007:809; CJEU, *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line ABP and OÜ Viking Line Eesti*, judgement of 11 December 2007, case no. C-438/05, ECLI:EU:C:2007:772; CJEU, *Mark Alemo-Herron and Others v. Parkwood Leisure Ltd*, judgement of 18 July 2013, case no. C-426/11, ECLI:EU:C:2013:521; CJEU, *Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) v. Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis*, judgement of 21 December 2016, case no. C-201/15, ECLI:EU:C:2016:972. This subordination of social rights was widely echoed, e.g., Sacha Garben, 'Balancing Social and Economic Fundamental Rights in the EU Legal Order', *European Labour Law Journal* 11 (2020), 364-390.

<sup>24</sup> Mazzotti (n. 7).

<sup>25</sup> EU action may even be understood as *rights-infringing*, in this special issue, Christian Thönnies, 'Invisible Infringements: On the AFSJ's Under-Constitutionalisation', *HJIL* 86 (2026), 299-330. The subordination of social rights to economic freedoms or the curtailment of social and labour rights in the sovereign debt crisis show the relevance of this characterisation for Social Europe. While it is possible for EU institutions to incur liability for rights infringements caused by their action, the bar for effective access thereto is at a high level, CJEU, *Ledra Advertising Ltd and Others v. European Commission and European Central Bank*, judgement of 20 September 2016, case nos C-8/15 to C-10/15, ECLI:EU:C:2016:701.

vignette of the young European woman, discussed in the previous Section, does precisely that: individual opportunities are highlighted, but distributive and exclusionary consequences remain unacknowledged. Similarly, the volume recasts early free movement and vocational training policy – as admitted by the CLS, originally designed to allocate the factor of production ‘labour’ – as expressions of personal freedom.<sup>26</sup> The chapter’s only engagement with scholarship, citing Dutch jurist Henry G. Schermers (1985), argues for example that the CJEU and the Commission transformed vocational training policy into free movement of students.<sup>27</sup> While a free movement of students undoubtedly exists now, this narrative overlooks that both the case-law<sup>28</sup> and the first *Erasmus* programme<sup>29</sup> tied such mobility to the creation of a skilled workforce and that access to its current version remains restricted, for example through conditions on the receipt of study finance in another Member State.<sup>30</sup> These limits shape actual patterns of distribution and exclusion in the EU. In recalling everyday life stories of Europeans, Ben Judah’s non-academic volume *This is Europe: The Way We Live Now* illustrates this: the free movement of students can be the story of a girl from a disadvantaged family in the small Latvian town Liepāja who turns to online sex work to avail herself effectively of her right to study in Italy.<sup>31</sup>

Fourth, the CLS constructs Social Europe as narrowly European. Its benefits are framed as accruing to EU citizens – specifically, as the CLS emphasises, ‘national[s] of one Member State’.<sup>32</sup> This framing disregards, for instance, how EU social law regulates access to work and training in the EU for non-EU nationals and, thereby, interacts with risk and injustice within global geographical mobility.<sup>33</sup> Even within EU citizenship, it obscures struc-

<sup>26</sup> Galindo Martín et al. (n. 5), 134, 142.

<sup>27</sup> Galindo Martín et al. (n. 5), 142-144 in particular (n. 350).

<sup>28</sup> See the concept of ‘would-be-worker’ status in Gisella Gori, *Towards an EU Right to Education* (Kluwer Law International 2001), 41.

<sup>29</sup> The first *Erasmus* programme, also cited by *70 Years of EU Law* (n. 358), explicitly aimed to increase cross-border student mobility ‘in order that the Community may draw upon an adequate pool of manpower with first-hand experience of economic and social aspects of other Member States [...]’ Decision 87/327/EEC of 15 June 1987 adopting the European Community Action Scheme for the Mobility of University Students (ERASMUS), OJ 1987 L 166, Art. 2(i).

<sup>30</sup> Emblematically, CJEU, *Jacqueline Förster v. Hoofddirectie van de Informatie Beheer Groep*, judgement of 18 November 2008, case no. C-158/07, ECLI:EU:C:2008:630.

<sup>31</sup> Ben Judah, *This Is Europe: The Way We Live Now* (Picador 2023), 141-158.

<sup>32</sup> Galindo Martín et al. (n. 5), 133.

<sup>33</sup> E.g., Directive 2016/801/EU of the European Parliament and of the Council of 11 May 2016 on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Research, Studies, Training, Voluntary Service, Pupil Exchange Schemes or

tural injustice: the Helsinki-Lisbon journey exemplifies mobility for privileged EU citizens, but not the barriers faced by the same EU citizens coming from disadvantaged regions or backgrounds. Such barriers are rooted in the conditions attached to the longer-term access to free movement law and its equal treatment rights, such as financial resources, studies, or work.<sup>34</sup> This latter vision narrows even further the question of for whom the world of EU law is for, that is mainly for those privileged EU citizens already able and eventually willing to move across borders.

Although more ambitious and contextual than other contributions to the volume, the sixth chapter ultimately remains bound by an interpretive template that centres on law and institutions, assumes incremental progress, celebrates emancipatory potential, and limits its gaze to a narrow European frame. Even though not all these characteristics can be explored here, they shape how citizens, practitioners, and scholars think and envision EU integration, its social and distributive dimensions, and their futures. Fractures, discontinuities, and alternative trajectories, which are essential to understanding seventy years of social integration, are instead largely left unexplored in the volume, although they would resituate and eventually contest its way of narrating EU integration.

#### IV. Sketching Social Europe in Lawyers' EU Social Policy Scholarship

A central question is whether EU social policy scholarship – the main body of literature relevant to the sixth chapter of *70 Years of EU Law* – acknowledges Social Europe's fractures, discontinuities, and alternative trajectories more fully. This section contrasts the narratives of Social Europe found in *70 Years of EU Law* with those emerging from the academic field. It argues that while EU social policy scholarship offers a more nuanced account, it remains, for its scope and maturity, shaped by a still linear conception of integration.

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Educational Projects and Au Pairing (Recast), OJ 2016 L 132; Directive 2021/1883/EU of 20 October 2021 on the Conditions of Entry and Residence of Third-Country Nationals for the Purpose of Highly Qualified Employment, and Repealing Council Directive 2009/50/EC, OJ 2021 L 382.

<sup>34</sup> European Parliament and Council, Directive 2004/38/EC on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States, OJ L 158, 30 April 2004, 77-123'; CJEU, *Jobcenter Berlin Neukölln v. Nazifa Alimanovic and Others*, judgement of 15 September 2015, case no. C-67/14, ECLI:EU:C:2015:597.

As in *70 Years of EU Law*, most accounts in EU social policy scholarship situate Social Europe's beginnings in the 1970s, when the first labour law directives were adopted, aside from the earlier free movement of workers.<sup>35</sup> Free movement, however, relies on a different regulatory logic: while social and labour law offset negative effects of market operation, free movement law provides equal treatment rights to non-nationals as precondition to market participation. Both narratives emphasise the initially weak social competences in Arts 117-118 EEC on social policy, and the shift toward legislative action in the economic downturn of the 1970s.<sup>36</sup> Yet legal scholars also introduced more conceptual interpretations of Social Europe's constitutional design most notably through the idea of an 'embedded liberal bargain'.<sup>37</sup> From this perspective, integration aimed to extend markets across national borders while it left Member States responsible for their social regulation.<sup>38</sup> This constitutional design then structurally constrained Social Europe.

From the 1980s, scholarship increasingly recognised the United Kingdom's (UK's) opposition to social policy directives as a major constraint,<sup>39</sup> and discussed the 1980s and 1990s Delors Commissions' single market

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<sup>35</sup> This narrative finds several expressions in EU law scholarship characterising the 1970s directives as a 'change of direction', the 'Community's new deal', or a 'shift' from a 'strategy of non-intervention' to a 'harmonisation strategy', compare Catherine Barnard, *EU Employment Law* (4th edn, Oxford University Press 2012), 8f.; Jeff Kenner, *EU Employment Law From Rome to Amsterdam and Beyond* (Bloomsbury Publishing 2002), 3; Brian Bercusson, *European Labour Law* (2nd edn, Cambridge University Press 2009), 104-120. I rely on these three major 'textbooks' of Social Europe as they tend to represent the existing narratives of its development. See also Catherine Barnard, 'EU "Social" Policy From Employment Law to Labour Market Reform' in: Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (Oxford University Press 2021), 678-720.

<sup>36</sup> E. g., compare Bercusson, 'Shifting Strategies 1951-1986: ECSC, EEC, Harmonisation, Financial Instruments, Qualified Majority Voting' in: Bercusson, *European Labour Law* (n. 35), 99-125; Galindo Martín et al. (n. 5), 138.

<sup>37</sup> Diamond Ashiagbor, 'Unravelling the Embedded Liberal Bargain: Labour and Social Welfare Law in the Context of EU Market Integration', *ELJ* 19 (2013), 303-324. The notion 'embedded liberalism' has been coined by John Ruggie in describing the post-WW II economic world order, John Gerard Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order International Regimes: Section 4: Cases', *IO* 36 (1982), 379-415. In another lineage, it may trace back to the notion of embeddedness in Karl Polanyi's work, first published in 1944, Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (2nd edn, Beacon Press 1944).

<sup>38</sup> Ashiagbor (n. 37).

<sup>39</sup> E. g., Bob Hepple, 'The Crisis in EEC Labour Law', *ILJ* 16 (1987), 77-87 (82); Barnard, *EU Employment Law* (n. 35), 9-10.

project in a social perspective.<sup>40</sup> The 1990s and 2000s also brought growing attention to modes of governance beyond law like policy coordination, including soft law,<sup>41</sup> dialogue with social partners introduced with the 1992 Maastricht Treaty,<sup>42</sup> or ultimately the European Semester's policy monitoring<sup>43</sup> and the use of EU funding as governance instruments.<sup>44</sup> Researchers moreover focused on setbacks and transformations in social integration. They criticised the decline of binding labour regulation from the early 2000s to the proclamation of the European Pillar of Social Rights and the erosion of social rights during the sovereign debt crisis.<sup>45</sup> Particular concern has been expressed about CJEU case-law subordinating social rights to economic freedoms.<sup>46</sup> Since the late 2010s, the field has further diversified: some observe a revival of EU labour law,<sup>47</sup> others

<sup>40</sup> Barnard, *EU Employment Law* (n. 35), 10-14; Kenner (n. 35), 71-108. Interestingly, *70 Years of EU Law* does acknowledge the importance of the single market project from Jacques Delors' 1985 'White Paper Completing the Internal Market' until 1992, but does not investigate the so-called 'social dimension of the internal market', Calleja and Rusche (n. 11), 20 f. On this social dimension, e. g., European Commission, 'SEC(88) 1148 – Dimension Sociale Du Marché Intérieur'; European Commission, 'Press Release – The Social Dimension of the Internal Market: A Key Factor for the Success in 1992' <[https://ec.europa.eu/commission/press-corner/detail/en/IP\\_88\\_269](https://ec.europa.eu/commission/press-corner/detail/en/IP_88_269)>, last access 11 February 2026.

<sup>41</sup> Joanne Scott and David M. Trubek, 'Mind the Gap: Law and New Approaches to Governance in the European Union', *ELJ* 8 (2002), 1-18; Diamond Ashiagbor, *The European Employment Strategy Labour Market Regulation and New Governance* (Oxford University Press 2005); Gráinne De Búrca and Joanne Scott, *Law and New Governance in the EU and the US* (Bloomsbury Publishing 2006); Mark Dawson, 'Three Waves of New Governance in the European Union', *ELJ* 36 (2011), 208-225.

<sup>42</sup> E. g., Catherine Barnard, 'A Social Policy for Europe: Politicians 1, Lawyers 0', *Int. J. Comp. L. L. I. R.* 8 (1992), 15-31; Brian Bercusson, 'The Dynamic of European Labour Law after Maastricht', *ILJ* 23 (1994), 1-31. For more literature, see Section V. 2. below.

<sup>43</sup> Costamagna (n. 22); Mark Dawson, 'New Governance and the Displacement of Social Europe: The Case of the European Semester', *Eu Const. L. Rev.* 14 (2018), 191-209; Paul Dermine, *The New Economic Governance of the Eurozone: A Rule of Law Analysis* (Cambridge University Press 2022).

<sup>44</sup> Viorica Viță, 'In Conditionality We Trust: What Scope for Conditionality in the Emerging European Economic Constitution?' in: Herwig Hofmann, Katerina Patatzatou and Giovanni Zaccaroni (eds), *The Metamorphosis of the European Economic Constitution* (Edward Elgar Publishing 2019), 199-227; Claire Kilpatrick, 'Explaining and Remediating the Near Absence of the Budget in EU Law Scholarship', *CML Rev.* 61 (2024), 623-654; Claire Kilpatrick and Joanne Scott (eds), *New Frontiers of EU Funding: Law, Policy, Politics* (Oxford University Press 2024); Leticia Díez Sánchez, 'Why Cohesion Policy Is Not about Cohesion', *CML Rev.* 62 (2025), 13-48. Exceptionally Bercusson's textbook stresses the use of the ESF as a governance strategy in the 1980s, Bercusson, 'Shifting Strategies 1951-1986' (n. 36), 121.

<sup>45</sup> Comprehensively in (n. 22) above.

<sup>46</sup> Draw on (n. 23) above.

<sup>47</sup> Kilpatrick, 'The Roaring 20s' (n. 21); Sven Schreurs, 'Re-Embedding European Market Society? EU Labour Regulation and the "Double Countermovement" to Market-Making Integration', *J. Common Mkt. Stud.* 64 (2025), 881-901.

study the intersection of Social Europe with sustainability,<sup>48</sup> trade and supply chains,<sup>49</sup> or colonial legacies.<sup>50</sup>

Overall, EU social policy scholarship provides a more differentiated narrative of social integration than *70 Years of EU Law*, but its dominant historical storyline still privileges legal instruments and an institutional vision of the expansion of Social Europe from the 1970s onwards.

## V. Telling Social Europe Differently

This article proposes an alternative mode of narrating EU integration by placing democratic, constructive, and distributive reflection at its centre. It argues for an analytical focus on the fractures, discontinuities, and alternative trajectories that have shaped Social Europe and EU integration more broadly. The following sections illustrate this approach through three examples respectively understood as fractures, discontinuities, and alternative trajectories: the European Social Fund, the rise and demise of European Social Dialogue, and the overlooked origins of EU labour law. As conventional narratives generally downplay such alternatives by narrating EU integration as a story of progression, the approach proposed allows to recover how EU competences, legal forms and practices appear and transform in political struggles. These struggles, in turn, provide space for reimagining EU integration as a democratic, constructive, and distributive site.

### 1. Fractures: The European Social Fund

The ESF's history reveals a fragmented and responsive development of social integration: this fund engaged with social governance beyond law way

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<sup>48</sup> E. g., Kalina Arabadjieva and Paolo Tomassetti, 'Towards Workers' Environmental Rights: An Analysis of EU Labour and Environmental Law' (2024). European Trade Union Institute (ETUI) Brussels Working Paper No. 2024.02, available at <<https://hdl.handle.net/10419/301120>>, last access 11 February 2026; Kalina Arabadjieva and Sanja Bogojević, 'The European Green Deal: Climate Action, Social Impacts and Just Transition Safeguards', YBEL 43 (2024), 34-55.

<sup>49</sup> Albeit not strictly speaking 'EU social policy scholarship' in its received sense, A. Nissen studies the intersections between global modes of production and EU initiatives relevant to labour law, notably forced labour and other labour rights violations, Aleydis Nissen, *The European Union, Emerging Global Business and Human Rights* (Cambridge University Press 2022), 130-139.

<sup>50</sup> Hanna Eklund, 'Peoples, Inhabitants and Workers: Colonialism in the Treaty of Rome', EJIL 34 (2023), 831-854.

before the 1990s, while having already a distributive character. Its development repeatedly responded to the economic, political, and socio-demographic context of EU integration. The fund is here understood as illustrating fractures in EU integration as its use shows how a continuously existing regulatory instrument has served different policy purposes over time. Its fractures are moments where the fund's policy development was interrupted and readjusted.

The ESF was set up by the very EEC Treaty. Its initial Treaty legal framework, valid from 1958 to 1971, allowed to provide upon request up to 50 % of a Member States' expenditure for the retraining of workers, their geographical mobility, or state aid for short-term work and transitional schemes for workers affected by economic restructuring.<sup>51</sup> The conditions for the implementation of these funding objectives were fixed by the Council.<sup>52</sup> The Council could also modify the ESF's very objectives after the transitional period for the establishment of the common market which was to end in 1969.<sup>53</sup> The ESF aimed to improve the living and working conditions in the Community.<sup>54</sup> Although more modest, it followed up on the financial provisions of the Treaty establishing the European Coal and Steel Community, which had also included common borrowing or more extensive social policy measures.<sup>55</sup> In any event, the ESF found only very limited interest among legal scholars until today.<sup>56</sup> Not even the 2020s many discussions on the EU budget as a governance mechanism centre on the ESF.<sup>57</sup>

<sup>51</sup> Arts 123-128 EEC. Not all types of Member State expenditure could be supported. For instance, the reconversion of workers could only be supported if the unemployed workers could find work in a new field. Workers also had to have been employed for at least six months.

<sup>52</sup> Art. 127 EEC. As in Council of the European Economic Community, 'Règlement N° 9 Concernant Le Fonds Social Européen (1960)', Journal Officiel 56, 1189-1198.

<sup>53</sup> Art. 126 EEC.

<sup>54</sup> E. g., Arts 2-3 EEC.

<sup>55</sup> Arts 49-53 ECSC. The social policy measures, for example, included housing to relocate workers in the coal and steel industries, Doreen Collins, *The European Economic Communities: The Social Policy of the First Phase, Vol. 1, 1958-72* (M. Robertson 1975); Hans Wirz, 'Doreen Collins, The European Communities: The Social Policy of the First Phase, Volume 1, The European Coal and Steel Community 1951-70, viii+128pp.; Volume 2, The European Economic Community 1958-1972, ix+286pp. £6.95, Martin Robertson, London, 1975', *Journal of Social Policy* 6 (1977), 106 f.

<sup>56</sup> On the early ESF, Doreen Collins, *The European Economic Communities: The Social Policy of the First Phase, Vol. 2, 1958-72* (M. Robertson 1975); Wolfgang Stabenow, 'The European Social Fund', *CML Rev.* 14 (1977), 435-456; Doreen Collins, *The Operation of the European Social Fund* (Croom Helm 1983). Another exception is Bercusson, 'Shifting Strategies 1951-1986' (n. 36), 121.

<sup>57</sup> Often focused on Next Generation EU's social implications, e. g., the special issue 'The NextGeneration EU in Action: Impact on Social and Labour Policies' in issue 1S of volume 15 of the Italian Labour Law e-Journal (2022).

In 1971, however, the Council revised the ESF's scope. It allowed ESF support where the common market negatively affected employment or a decline in employment threatened the Community's harmonious development.<sup>58</sup> This revision and its subsequent iterations throughout the 1970s and 1980s should start to turn the ESF conceptually into a funding instrument that offset negative effects on labour from the common market. The ESF further served to discuss employment policy on the Community level, a process accelerated by the 1973 oil-crisis' economic downturn. New ESF measures addressed specific features of the ensuing rise in unemployment, such as the alarming appearance of youth unemployment.<sup>59</sup> Ultimately, the ESF could support youth employment creation,<sup>60</sup> and, after a further reform in 1983, at least three-quarters of its beneficiaries had to be young jobseekers.<sup>61</sup>

While this youth-employment focus receded relatively as the ESF became integrated into the cohesion policy framework envisioned with the Single European Act,<sup>62</sup> the fund's development shows that EU social governance has never followed a simple trajectory of expansion. The ESF repeatedly reframed the relationship between market integration, employment policy, and social and labour regulation. It also demonstrates how distributive governance beyond law operated long before EU governance scholarship emphasised its emergence from the 1990s-2000s onwards. In other words, since 1958, the ESF served several, shifting policy purposes ranging from, for example, sectoral-industrial, employment, into spatial-regional policy. The fund illustrates how EU regulatory instruments support different policy purposes at different points in time, despite their formally continuous existence. Narrating EU integration via its fractures, the moments where policy development is interrupted and readjusted, illustrates the other options imaginable for making use of the Union's already existing regulatory toolkit.

<sup>58</sup> Council of the European Communities, Council Decision 71/66/EEC of 1 February 1971 on the Reform of the European Social Fund, OJ L 28, 4.2.1971, 15-17.

<sup>59</sup> Council of the European Communities, Council Decision 75/459/EEC on Action by the European Social Fund for Persons Affected by Employment Difficulties, OJ L 199, 30.7.1975, 36.

<sup>60</sup> Council of the European Communities, Council Regulation 3039/78/EEC of 18 December 1978 on the Creation of Two New Types of Aid for Young People from the European Social Fund, OJ L 361, 23.12.1978, 3-4.

<sup>61</sup> Articles 4 and 7 of Council of the European Communities, Council Decision 83/516/EEC of 17 October 1983 on the Tasks of the European Social Fund, OJ L 289, 22.10.1983, 38-41.

<sup>62</sup> Youth employment, though, remained an important focal point. European Parliament and Council, Regulation 2021/1057/EU of the European Parliament and of the Council of 24 June 2021 Establishing the European Social Fund Plus (ESF+) and Repealing Regulation 1296/2013/EU, OJ L 231, 30.6.2021, 21-59.

## 2. Discontinuities: The Rise and Demise of Interprofessional European Social Dialogue

Another way to expose the limits in received narratives, this paper suggests, is to look for discontinuities understood as foundational, political reorientations. This section presents the rise and demise of European Social Dialogue among trade unions and employer organisations (social partners) as two discontinuities in Social Europe, its actors, and decision-making mechanisms. It thereby underscores that foundational, political discontinuity is a much more common occurrence in EU law and policy than accepted in its conventional, often depoliticised narratives.

In *70 Years of EU Law*, Social Europe appears largely as a project of the CJEU and the Commission. Both institutions matter, but this perspective unduly restricts how and by whom EU social integration is shaped. In particular, the period from broadly 1984 to the 2010s saw collective actors – European trade unions and employer organisations – gain influence in Social Europe’s decision-making via a nascent procedure of social dialogue.<sup>63</sup> Their political objectives came to align in the late 1980s with those of EU institutions and Member States in favour of European social dialogue and later split up in a second foundational, political reorientation to bring the dialogue procedure to a halt.

Labour regulation is more complex than other regulatory fields in terms of the actors involved. Besides public institutions, trade unions, and employer organisations have collectively regulated pay or working conditions throughout many European countries by their agreement.<sup>64</sup> While procedures differ, collective regulation of the economy has a lasting tradition.<sup>65</sup>

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<sup>63</sup> European social dialogue found scholarly interest at its introduction by the 1992 Maastricht Treaty but mainly as to its legal interpretation and capacity to provide for neo-corporatism. E. g., Brian Bercusson, ‘Maastricht: A Fundamental Change in European Labour Law’, *Industrial Relations Journal* 23 (1992), 177-190; Philippa Watson, ‘Social Policy after Maastricht’, *CML Rev.* 30 (1993), 481-513; Gerda Falkner, *EU Social Policy in the 1990s: Towards a Corporatist Policy Community* (Routledge 1998). A partial exception, Jon Erik Dølvik, *Redrawing Boundaries of Solidarity?: ETUC, Social Dialogue and the Europeanisation of Trade Unions in the 1990s* (ARENA 1997). For a thorough overview, Claire Kilpatrick, Marc Steiert and Jacopo Cellini, *The Social Partners and EU Treaty-Making – Revisiting Maastricht Through the Archives* (2025). European University Institute (EUI) Working Paper No. 2025/01, available at: <https://hdl.handle.net/1814/78294>.

<sup>64</sup> On collective regulation of the economy, Dukes (n. 6).

<sup>65</sup> Less entrenched in Central-Eastern Europe, Magdalena Bernaciak, ‘All Roads Lead to Decentralization? Collective Bargaining Trends and Prospects in Central and Eastern Europe’, *Transfer: European Review of Labour and Research* 21 (2015), 373-381; Guglielmo Meardi, ‘More Voice after More Exit? Unstable Industrial Relations in Central Eastern Europe’, *Industrial Relations Journal* 38 (2017), 503-523.

It considers the joint action of social partners as an autonomous expression of economic democracy, a notion of democracy elaborated since the early 20th century<sup>66</sup> and at times still reflected by EU stakeholders in the mid- to late 1980s.<sup>67</sup> Social dialogue can be carried out through bipartite bargaining between trade unions and employer organisations or through consultation and decision-making in tripartite structures involving public institutions and social partners. Bipartite and tripartite social dialogue is possible across economic sectors, inside a sector, or at lower levels of economic organisation. As it balances employer and worker power, social dialogue has immediate repercussions on the distribution of power and wealth in economic production.

Historically, social partners were consulted in reflections on Social Europe since the EEC's earliest days.<sup>68</sup> Yet, before the late 1980s, their strength and missing alignment with the political positions of the EU institutions and the Member States were insufficient to operationalise regulation via collective agreement at the European level.<sup>69</sup> Before this period, practitioners and scholars legally and politically questioned whether European-level social partner confederations could enter into collective agreement.<sup>70</sup> By contrast, the several EU labour and equality Directives were adopted by the Council since the mid-1970s.<sup>71</sup> They ultimately trace to a declaration for Community social policy made by the Heads of State and Government at their 1972 Paris Summit.<sup>72</sup>

<sup>66</sup> On economic democracy, (n. 6) above.

<sup>67</sup> See Delors' first Parliament speech in January 1985, 'The Thrust of Commission Policy, Statement by Jacques Delors, President of the Commission, to the European Parliament and Extracts from His Reply to the Ensuing Debate' Europe's strength.

<sup>68</sup> As underlined, for instance, by the Commission official working on social dialogue and former trade unionist Carlo Savoini in: Historical Archives of the European Union (HAEU) (ed.), 'INT 594 – Interview with Carlo Savoini by M. G. Melchionni – Voices on Europe'.

<sup>69</sup> The sixth and seventh chapter in Dølvik (n. 63). Also Corinne Gobin, 'Construction Européenne et Syndicalisme Européen: Un Aperçu de Trente-Quatre Ans d'histoire (1958-1991)', *Revue de l'IREM* 21 (1996), 119-151; Pierre Tilly, 'La place de l'acteur syndical dans le dialogue social européen, de la CEECA aux années 1980' in: Éric Bussière, Michel Dumoulin and Sylvain Schirmann (eds), *Économies nationales et intégration Européenne: Voies et Étapes* (1st edn, Franz Steiner Verlag 2014), 119-140.

<sup>70</sup> The Commission had asked French labour law scholar Gérard Lyon-Caen to assess the legal landscape as early as 1972, Gérard Lyon-Caen, 'À La Recherche de La Convention Collective Européenne, Étude Pour La Commission Des Communautés Européennes', *Étude pour la Commission des Communautés Européennes Doc. n.°V/855/72-F* (1972).

<sup>71</sup> The instruments in (n. 17) above.

<sup>72</sup> European Council, Declaration of the European Summit Held in Paris on 19-21 October 1972.

Collective regulation entered the European-level with a process of consensus-building among three cross-sectoral European social partner organisations in the 1980s – the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederation of Europe (UNICE), and the European Centre of Employers and Enterprises providing Public Services (CEEP). These three organisations were invited to a series of high-level meetings and thematic work sessions by the first Delors Commission.<sup>73</sup> From its first days in January 1985, this Commission politically and administratively supported contacts among the above-mentioned social partners.<sup>74</sup>

These regular contacts should prove crucial to align the political priorities of the Commission, the Member States and the social partners. The latter used this opportunity for capacity-building as all organisations came to consider themselves as initially unable to bargain collectively on the European level. The three moreover aligned their positions internally as employers had initially rejected European collective bargaining,<sup>75</sup> and they established productive personal contacts such as among ETUC General-Secretary Emilio Gabaglio, UNICE General-Secretary Zygmunt Tyskiewicz, and the Commission Director-General responsible for social dialogue Jean Degimbe.<sup>76</sup> These are only some examples that illustrate the importance of institutional, non-institutional, and even individual actors in this process of political reorientation.<sup>77</sup> Even the Member States agreed in the 1991 Maastricht Intergovernmental Conference with the Commission and the three social partners on a procedure for European social dialogue included in a social policy agreement annexed to the Maastricht Treaty. This procedure institutionalised social partner consultation and enabled EU legal acts that extend collectively bargained agreements.<sup>78</sup> It applied to 11 of the then 12 Member States to the exception of the United Kingdom which had opted out, and relied almost

<sup>73</sup> A comprehensive account in Kilpatrick, Steiert and Cellini (n. 63).

<sup>74</sup> Though, one can question the Delors Commission's motives: was the initiative about autonomous collective bargaining or to provide legitimacy for its own initiatives via social partner consultation? Kilpatrick, Steiert and Cellini (n. 63).

<sup>75</sup> Kilpatrick, Steiert and Cellini (n. 63), 58-62; Dølvik (n. 63), Chapters 5-7.

<sup>76</sup> As underlined by the many first-person recounts of the period, Zygmunt Tyskiewicz, 'The European Social Dialogue 1985-1998: A Personal View' in: Emilio Gabaglio and Reiner Hoffmann (eds), *European Trade Union Yearbook 1998* (European Trade Union Institute 1999); Jean Degimbe, *La politique sociale européenne: du Traité de Rome au Traité d'Amsterdam* (European Trade Union Institute 1999); Jean Lapeyre, *The European Social Dialogue: The History of a Social Innovation (1985-2003)* (European Trade Union Institute 2017).

<sup>77</sup> Again, Kilpatrick, Steiert and Cellini (n. 63).

<sup>78</sup> Today's slightly reformulated Arts 153-155 TFEU.

entirely on a proposal elaborated in 1991 by the three social partners with the Commission in a structured process.<sup>79</sup>

Political reorientation by the Commission, the Member States, and three social partners thus opened a door towards a Social Europe with a dimension of collective bargaining and, possibly one day, economic democracy. During the 1990s, the dialogue mechanism produced several directives translating collectively bargained ‘framework agreements’ into EU labour Directives.<sup>80</sup> This flourishing is often related to political support for social legislation by the Commission as Brian Bercusson powerfully coined EU-level social dialogue to be carried out ‘in the shadow of the law’. In his perspective, employer organisations negotiated in anticipation of a Commission legislative initiative.<sup>81</sup> The cross-sectoral, private employer organisation UNICE indeed pursued such a strategy with collective bargaining as a means to ‘avoid or delay’ EU labour legislation.<sup>82</sup>

However, political priorities were reoriented again in a second discontinuity in the early 2000s as the Commission and Member States’ support for social legislation waned.<sup>83</sup> This led to a world in which social partners are more reluctant to bargain successfully and framework agreements seem unlikely. By the mid-2010s, the Commission even questioned legally whether

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<sup>79</sup> The proposal was made by an ‘ad hoc working party’ composed of representatives of the three social partners and steered by the Commission, European Commission General-Secretariat, ‘SC(91) 58 – Réunion du Groupe ad hoc en vue d’un nouveau Traité (16 avril 1991)’ in: Historical Archives Service of the European Commission (HACOM) (ed.), ‘BAC 489/1999 17 – Dialogue Social: Groupe de Pilotage Ad Hoc’. This working party did not operate in isolation from but closely related to the many Treaty proposals made by institutional actors and the Member States, Kilpatrick, Steiert and Cellini (n. 63). The Member States also made some modifications to the social partner proposal upon Danish initiative in order to protect the existing institutional balance in favour of the Commission, ‘Compte rendu de la réunion des représentants personnels du 7 novembre 1991’ in: Historical Archives Service of the European Commission (HACOM) (ed.), ‘BAC 74/2005 77 – Politique Sociale – Dossier Maastricht 4’.

<sup>80</sup> Directive 96/34/EC of 3 June 1996 on the Framework Agreement on Parental Leave Concluded by UNICE, CEEP and the ETUC, OJ 1996 L 145; Directive 97/81/EC of 15 December 1997 Concerning the Framework Agreement on Part-Time Work Concluded by UNICE, CEEP and the ETUC, OJ 1998 L 14; Council Directive 1999/70/EC of 28 June 1999 Concerning the Framework Agreement on Fixed-Term Work Concluded by ETUC, UNICE and CEEP, OJ 1999 L 175.

<sup>81</sup> Bercusson, ‘Fundamental Change’ (n. 63), 177; Bercusson, ‘Dynamic of European Labour Law’ (n. 42), 1.

<sup>82</sup> See ‘Stratégie et Orientations politiques de l’UNICE’ (21/05/92) in: Archives of Jean Lapeyre, ‘Patronat – UNICE’.

<sup>83</sup> See Kilpatrick, ‘The Roaring 20s’ (n. 21), 11.

framework agreements should be translated into binding EU law.<sup>84</sup> This second reversal effectively halted the experiment in transnational collective bargaining.

Understanding European social dialogue as discontinuities thus clarifies how integration depends on changing political constellations. What this story suggests is that foundational, political discontinuity is a common occurrence within the development of EU law and policy. It also provides space to examine the role of constellations of institutional and non-institutional actors in determining the political, and thereby distributive outcomes of discontinuity. The two episodes show how distributive power in social and labour, but also other areas of EU regulation fluctuates, and is repeatedly politically reoriented over time and with changing political constellations.

### 3. Alternative Trajectories: Politics and Governance Beyond Law in Early Social Europe

The early history of Social Europe contains overlooked initiatives – alternative trajectories – that challenge the conventional chronology beginning with the 1970s labour and equality directives. Two such examples – the stories of a common exchange programme for young workers under Arts 5, 50 and 145 EEC and of Commission Recommendation 67/125/EEC concerning the protection of young persons at work (‘Recommendation 67/125/EEC’) – demonstrate in this section how alternative trajectories of social integration were tested but politically resisted or forgotten with time.<sup>85</sup>

The story of a common exchange programme for young workers and Arts 5, 50 and 145 EEC illustrates several early attempts by the European Commission in the 1960s to establish a legal basis for Social Europe. The Commission also sought to couple market-making with an element of market regulation within the same initiative. Lionello Levi Sandri, Commissioner for Social Affairs from 1961 to 1970, and his Directorate-General played a leading role

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<sup>84</sup> Silvia Borelli and Filip Dorssemont (eds), *European Social Dialogue in the Court of Justice – An Amicus Curiae Workshop on the EPSU Case*; Manuel Antonio García Muñoz Alhambra, ‘An Uncertain Future for EU-Level Collective Bargaining: The New Rules of the Game after EPSU’, *ILJ* 51 (2022), 318–345; Perrine Carré and Marc Steiert, ‘Social Europe Without Social Dialogue: Decision of the Court of Justice of the European Union in C-928/19 P *European Federation of Public Service Unions*’, *Eu Const. L. Rev.* 18 (2022), 315–333.

<sup>85</sup> Other examples in Aurélie Dianara Andry, *Social Europe, the Road Not Taken: The Left and European Integration in the Long 1970s* (Oxford University Press 2022).

in this process.<sup>86</sup> In principle, Arts 117-118 EEC on social policy authorised only the issuing of Commission Opinions in the field of social and labour law. The following discussion explains why these early efforts to create a legal basis for Social Europe, and to fill it with substantive regulation, ultimately failed: although the proposals were legally plausible, they faced determined political opposition from a majority of Member States.

Art. 50 EEC is a curious Treaty provision. It calls upon the ‘Member States’ to establish an exchange programme for young workers, yet its French version speaks of a ‘common’ programme – terminology closely associated with the common market.<sup>87</sup> This duality rendered competence under Article 50 EEC uncertain: plausible claims existed both for Member State action outside the Community framework and for Council action within it, as the Council assembled those very Member States in their Community capacity.<sup>88</sup> Moreover, the provision was designed to support the common market’s establishment by facilitating the mobility of young workers beyond their existing free-movement rights. As Levi Sandri himself observed in writing academically, Article 50 EEC called for further measures to enable exchanges among young workers.<sup>89</sup>

In its first attempt to create such a programme, the Commission relied directly on Article 50 EEC.<sup>90</sup> Given the uncertainty surrounding competence, it also invoked Article 5 EEC, arguing that this provision imposed on Member States a duty to take all measures necessary to fulfil their Treaty obligations, including the obligation – so understood – to implement the

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<sup>86</sup> On Lionello Levi Sandri, Commissioner for Social Affairs from 1961 to 1970, Antonio Varsori and Lorenzo Mechi, *Lionello Levi Sandri e La Politica Sociale Europea* (Franco Angeli 2008).

<sup>87</sup> My translation. The French version is phrased: ‘Les États membres favorisent, dans le cadre d’un programme commun, l’échange de jeunes travailleurs.’ While the 1973 translation refers to a ‘joint’ programme, an initial English translation from 1962 translated ‘programme commun’ by common programme, European Economic Community, *Treaty Establishing the European Economic Community and Connected Documents*. (European Communities Publishing Services 1962).

<sup>88</sup> E. g., compare Art. 50 EEC in Ernst Wohlfarth, Ulrich Everling, Hans-Joachim Gläsner and Rudolf Sprung, *Die Europäische Wirtschaftsgemeinschaft: Kommentar Zum Vertrag* (Vahlen 1960); Rolando Quadri, Riccardo Monaco and Alberto Trabucchi, *Trattato Istitutivo Della Comunità Economica Europea: Commentario*. (Giuffrè 1965). See, Marc Steiert, ‘Youth Transitions and EU Integration: Paths to an EU Regulatory Fabric for Youth Employment’ (Thesis, European University Institute 2024), 48-55.

<sup>89</sup> Lionello Levi Sandri, ‘Articolo 50’ in: Rolando Quadri, Riccardo Monaco and Alberto Trabucchi, *Trattato Istitutivo Della Comunità Economica Europea: Commentario*. (Giuffrè 1965).

<sup>90</sup> European Commission, ‘COM (62) 25 – Mesures Pour Favoriser l’échange de Jeunes Travailleurs Dans Le Cadre d’un Programme Commun (Proposition de La Commission Au Conseil)’.

exchange programme under Article 50.<sup>91</sup> This reasoning implies a considerably broader reading of competence than would later prevail: the duty of sincere cooperation in Article 5 EEC could have been interpreted to justify action in areas such as social policy, where Article 117 EEC pursued improvements in working and living conditions but did not confer law-making powers.<sup>92</sup>

Through this proposal, the Commission moreover sought to align market-making with a dimension of market regulation. While the programme was primarily aimed at cross-border mobility, it would also have established a minimum and maximum duration for traineeships, introduced a framework for the remuneration of participating trainees or, where necessary, an obligation to provide adequate allowances, required Member States to recognise traineeships completed under the programme for social-security purposes even when not formally classed as employment, and provided for continuous monitoring of participants' progress.<sup>93</sup> None of these safeguards has since been incorporated into EU law, and despite renewed debate in the 2020s on a directive regulating traineeships in the EU, their adoption remains unlikely in light of Council opposition.<sup>94</sup> Domestic labour law, it seems, was expected to evolve by analogy by extending similar rights.

When several Member States challenged this reasoning, the Commission launched a second attempt to ground the exchange programme's legal basis – this time combining Arts 50 and 145 EEC.<sup>95</sup> The new approach sought to make use of the Council's capacity to coordinate economic, and by extension social, policy. Article 145 EEC, then nestled in EEC Treaty Part V on the Community institutions, defined the Council's tasks and empowered it to coordinate the economic policies of the Member States and to take decisions

<sup>91</sup> European Commission (n. 90), 11.

<sup>92</sup> For an early, yet much later and different use of the duty of sincere cooperation, ECJ, *Sabine von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen*, judgement of 10 April 1984, case no. C-14/83, ECLI:EU:C:1984:153.

<sup>93</sup> European Commission, 'COM (62) 25 – Proposition Premier Programme d'Echange Jeunes Travailleurs' (n. 90) Arts 3-6.

<sup>94</sup> Marc Steiert, *The EU and the Regulation of Young People's Work Transitions – Individuation, Governance and Quality* (2025). European Trade Union Institute (ETUI) Working Paper No. 2025.02, available at: <<https://hdl.handle.net/1814/92689>>, last access 11 February 2026; Joanna Helme, 'The Problems and Paradoxes with the EU's Regulation of Traineeships: A Way Forward', *ILJ* 53 (2024), 679-710.

<sup>95</sup> HAEU, 'HICA.H.CM2.1964.1143.1 – Note Du Groupe Des Questions Sociales Sur Les Propositions de La Commission Concernant Certaines Mesures Destinées à Favoriser l'échange de Jeunes Travailleurs, Dans Le Cadre Du Programme Commun, En Application de l'article 50 Du Traité (827/63 SOC 82) – Réunion Du 28/05/1963'. Ultimately leading to European Commission, 'COM (63) 14 – Projet d'un Premier Programme Commun Pour Favoriser l'échange de Jeunes Travailleurs (Présenté Par La Commission Au Conseil)'.

necessary for achieving the Treaty's objectives.<sup>96</sup> The Commission contended that economic policy coordination encompassed social policy, and thus the subject matter of Article 50 EEC. In its view, Article 145 EEC empowered the Council to adopt 'any measure necessary' for this purpose, including an exchange programme for young workers.<sup>97</sup> This second proposal differed from the first however in regulatory content. The envisaged Council decision was not intended to be binding under Article 189 EEC but to establish a framework programme akin to those adopted for the freedom of establishment and services, with subsequent decisions to specify its obligations.<sup>98</sup> Even so, the proposal reveals the Commission's ambition to strengthen the procedural foundations of social policy within the Community.

A group of Member States, however, resisted these efforts to reinforce Social Europe and its legal procedures. The failure of these initiatives was not due to legal implausibility but to political opposition. Although Italy, but also to some extent Belgium and the Netherlands, showed some sympathy for the Commission's second line of argument, no majority emerged in favour of Council competence – neither under unanimity nor simple majority voting.<sup>99</sup> An exchange programme for young workers was eventually established as a *sui generis* form of intergovernmental cooperation among Member States, without any improvement in trainees' working conditions.<sup>100</sup> These

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<sup>96</sup> Article 145 EEC reads: 'With a view to ensuring the achievement of the objectives laid down in this Treaty, and under the conditions provided for therein, the Council shall: ensure the co-ordination of the general economic policies of the Member States, and dispose of a power of decision.' The provision is no longer part of the primary law framework.

<sup>97</sup> 'En effet, le Conseil est appelé, en vertu des dispositions de l'article 145 du Traité, à assurer la coordination des politiques économiques générales des Etats membres, notion qui couvre également la politique sociale et, de ce fait, la matière visée à l'article 50 du Traité. Le Conseil peut, à cet effet, prendre toute action utile et, notamment arrêter le programme commun prévu à l'article 50, [...]. Il est d'ailleurs évident que les Etats membres ne peuvent pas arrêter individuellement un programme commun qui relève du domaine communautaire et qui, de ce fait, doit être déterminé par l'institution coordinatrice des politiques économiques générales des Etats membres, c'est-à-dire par le Conseil.' HAEU, '827/63 SOC 82', (n. 95) above, 2 f.

<sup>98</sup> HAEU, '827/63 SOC 82' (n. 95), 3.

<sup>99</sup> The Commission had argued for simple majority voting. Under Art. 148 EEC, simple majority voting applied whenever the EEC Treaty did not specify otherwise. HAEU, 'HI-CA.H.CM2.1964.1144.1 – Note Du Groupe Des Questions Sociales Sur Les Propositions de La Commission Concernant Certaines Mesures Destinées à Favoriser l'échange de Jeunes Travailleurs, Dans Le Cadre Du Programme Commun, En Application de l'article 50 Du Traité (1738/63 SOC 177) – Réunion Du 21 et 22 Novembre 1963'.

<sup>100</sup> Representatives of the Governments of the Member States of the European Economic Community Meeting in Council, Decision 64/307/EEC First Joint Programme to Encourage the Exchange of Young Workers within the Community, OJ 1226/64, 22. February 1964, 17 f. This programme did not use the formula characterising the legal basis of EU acts. For an archival recount, Steiert, 'Youth Transitions' (n. 88), 45-64.

episodes thus reveal early, alternative starting points for Social Europe. These were ambitious but ultimately abandoned trajectories. They nonetheless foreshadow later debates about competence, coordination, and distribution in the European project.

Another example of an alternative trajectory can be found in Commission Recommendation 67/125/EEC.<sup>101</sup> Although initially successfully adopted and aligning key aspects of domestic law, this largely overlooked early piece of soft law has been forgotten by practitioners and scholars with time. It shows an alternative trajectory in so far as it underlines a way in which policy coordination through soft law and governance beyond formal legislation could have been an openly defining feature of Community law and policy since as early as the 1960s and 1970s.<sup>102</sup>

To achieve regulatory alignment via a non-binding Recommendation on the prohibition of child labour and the working conditions of adolescents under Arts 117-118 EEC, the Commission initiated a process of consultation and consensus-building with the Member States and other stakeholders like certain social partner organisations as early as 1961.<sup>103</sup> Most of the Commission's normative recommendations were ultimately elaborated in this consensus-building process.<sup>104</sup> The Recommendation can even be placed in a broader ambition of upward harmonisation by the Commission. As then formulated strategically by the above-introduced Commissioner for Social Affairs Levi Sandri, Recommendations in the social field could not be limited to 'a transcript of what exists in each country; [but] had to go beyond and to

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<sup>101</sup> European Commission, 'Recommandation de La Commission 67/125/CEE Du 31 Janvier 1967 Adressée Aux Etats Membres Concernant La Protection Des Jeunes Au Travail, JO 13 Février 1967, 405-408'.

<sup>102</sup> Section IV above illustrates how scholarship acknowledges the importance of governance beyond law only from the 1990s-2000s onwards.

<sup>103</sup> European Commission, 'CCEE\_AFSO-1700 – Protection Au Travail Des Femmes et Des Jeunes Dans Les Etats Membres : La Protection de La Maternité. Volume 5 – V/1393/61 – Vergleichende Untersuchung Der Gesetze Zum Schutze Der Arbeitenden Jugend in Den Mitgliedstaaten Der EWG'.

<sup>104</sup> Compare Document V-9408/62 – 'Vergleichende Tabelle Über Die Regelungen Des Jugendarbeitsschutzes in Den Mitgliedsstaaten Der EWG' in : European Commission, 'CCEE\_AFSO-1701 Protection Au Travail Des Femmes et Des Jeunes Dans Les Etats Membres : Réunions, Études, Conventions et Règlements. Volume 2 (1961-1962) – V-9408/62 – Vergleichende Tabelle Über Die Regelungen Des Jugendarbeitsschutzes in Den Mitgliedsstaaten Der EWG'. 'V/12.098/rév. 1/64 – Projet de Recommandation concernant la Protection du Travail des Jeunes' in European Commission, 'CCEE\_AFSO-1704 Protection Au Travail Des Femmes et Des Jeunes Dans Les Etats Membres : La Protection de La Maternité. Volume 5'.

formulate concrete proposals'.<sup>105</sup> This is remarkable given that at the time the very meaning of the notion of harmonisation was still heatedly contested by political actors or scholars.<sup>106</sup>

Over the following decade, all six founding Member States aligned significant aspects of their domestic legislation on the prohibition of child labour and the working conditions of adolescent workers with many of the Commission's recommendations.<sup>107</sup> This episode formed part of yet another strategic process within the Commission which aimed at a policy coordination, possibly harmonisation, process within the Community's limited and non-binding social policy competences. As Jacques-Jean Ribas, Commission Director for Social Security and Social Action from 1958 to 1974, explained, the Commission sought to use its limited powers to provoke 'the birth of a process of harmonization [...] by relying on the indirect results of better knowledge of the situations in the six countries, the confrontation of problems, the exchange of experiences, and collaboration [...]'.<sup>108</sup>

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<sup>105</sup> My translation. 'La Recommandation en matière sociale – mais ce principe vaut également pour les autres secteurs – ne peut se résoudre en un procès-verbal de ce qui existe dans chaque pays particulier; elle doit aller plus loin et formuler des propositions concrètes.' Speech by Commissioner for Social Affairs Lionello Levi Sandri in the Economic and Social Committee in 'Compte-rendu des Délibérations du Comité Economique et Social concernant l'élaboration d'un avis relatif au "Projet de recommandation de la Commission adressé aux Etats membres concernant la protection des jeunes au travail" – 52ème session plénière du 23-24/02/1966' contained in European Commission, 'CCEE\_AFSO-1712 Protection Au Travail Des Femmes et Des Jeunes Dans Les Etats Membres: Protection Des Jeunes Au Travail et Protection de La Maternité. Volume 13 (1966)'.

<sup>106</sup> Compare Assemblée Parlementaire Européenne, 'Rapport (Nederhorst) Fait Au Nom De La Commission Sociale Sur L'Harmonisation Sociale, Document 87'; Riccardo Monaco, 'Comparaison et rapprochement des législations dans le Marché commun européen', RIDC 12 (1960), 61-74; Anne Limpens, 'Harmonisation des législations dans le cadre du Marché commun', RIDC 19 (1967), 621-653.

<sup>107</sup> Steiert, 'Youth Transitions' (n. 88), Chapter 3 – The Unanticipated History of Commission Recommendation 67/125/EEC on the Protection of Child and Adolescent Workers. For example, the Dutch legislator acknowledged the push coming from the Community, Netherlands, '13547 – Wijziging van de Arbeidswet 1919 (Jongerenstatuut) – Socialezekerheidsstelsel, Parlementaire Geschiedenis 1980-2014' (3 September 1975), <[https://www.socialezekerheidsstelsel.nl/id/vjsimh9t9czr/13547\\_wijziging\\_van\\_de\\_arbeidswet\\_1919](https://www.socialezekerheidsstelsel.nl/id/vjsimh9t9czr/13547_wijziging_van_de_arbeidswet_1919)>, last access 6 July 2021.

<sup>108</sup> Ribas writes on social security, but his assessment fits the area in question. My translation. "Ce même pragmatisme, et la prudence que lui imposait le peu de pouvoirs dont elle dispose, [...] a conduit la Commission à favoriser la naissance d'un processus d'harmonisation, et non à le dicter, et cela en misant sur les résultats indirects d'une meilleure connaissance des situations dans les six pays, de la confrontation des problèmes, de l'échange d'expériences, de la collaboration non seulement avec les représentants des gouvernements, mais également avec ceux des divers milieux intéressés [...], notamment les organisations d'employeurs et les organisations syndicales." Jacques Jean Ribas, *La Politique Sociale Des Communautés Européennes*, (Daloz 1969), 412.

Not all initiatives following this strategy produced upward harmonisation of social regulation, as success depended on Member State consensus,<sup>109</sup> and their examples of policy and legal coordination were forgotten with time. Yet Recommendation 67/125/EEC – and likely other examples still to be identified – reveal the incompleteness of conventional hard law-based narratives on the origins of Social Europe. The origins of Social Europe’s law are much more heterogeneous than assumed: they encompass multiple, legally plausible trajectories that may or may not have unfolded in the political power struggles of EU integration. For example, if conclusively followed upon, policy coordination in the field of social policy could have turned into an openly defining feature of EU integration since the early 1960s, which moreover could have included several non-institutional actors. By focusing on hard law only in narrating Social Europe, scholars and practitioners also bear a responsibility in shaping the available discourse on EU integration and therefore what may turn into one of its alternative trajectories instead. Like fractures and discontinuities, alternative trajectories help to recover and reimagine EU integration as a democratic, constructive, and distributive site.

## VI. Conclusion: Informing a Democratic, Constructive, and Distributive Debate on Europe via Its Past

In *70 Years of EU Law – A Union for Its Citizens*, the Commission Legal Service presented one possible and now institutionalised narrative of EU law, including its social dimension. This narrative centres on law and institutions, incremental progress, individual emancipation, and a narrow European frame. While this article could not dispute all these characteristics equally, in particular the emancipatory and narrowly European frame, it sketches a different way of telling Social Europe and, more broadly, EU integration by foregrounding fracture, discontinuity, and alternative trajectory. It emphasises that integration has always been contested; that diverse actors and ideas

<sup>109</sup> At the time, working mothers were also considered a vulnerable category by many. A similar Commission initiative was withdrawn, European Commission, ‘CCEE\_AFSSO-1700 – Protection Au Travail Des Femmes et Des Jeunes Dans Les Etats Membres: La Protection de La Maternité. Volume 5 – V/1393/61 – Vergleichende Untersuchung Der Gesetze Zum Schutze Der Arbeitenden Jugend in Den Mitgliedstaaten Der EWG’ (n. 103); European Commission, ‘CCEE\_AFSSO-1714 Protection Au Travail Des Femmes et Des Jeunes Dans Les Etats Membres: Protection Des Jeunes Au Travail et Protection de La Maternité. Volume 15 (1966-1967)’. Similarly, the Europeanising effect of a Commission Recommendation adopted on vocational orientation has been modest, European Commission, ‘Recommandation de la Commission 66/484/CEE, du 18 juillet 1966, aux États membres tendant à développer l’orientation professionnelle, JO 66, 24.8.1966, 2815-2819’.

have shaped its course and therefore its distributive consequences, which must be confronted front and centre. Highlighting fracture, discontinuity, and alternative trajectory also allows for a more respectful engagement with the actors of EU law and policy by shifting the focus of analysis and debate from institutions to democratic, societal, collective, and individual participation. A deeper knowledge of the past enables a more constructive reflection on contemporary and future European issues, while attention to the distributive dimension of integration is essential to move from concealing injustices to addressing them effectively.

The examples developed here are necessarily preliminary, as further research is needed – particularly into the supposedly emancipatory, external or global dimensions of Social Europe, which this article could not explore sufficiently.<sup>110</sup> Yet even this limited selection shows that the EU's social integration is richer, more complex, and more contested than received narratives suggest. It also reveals that the current state of EU law is not an immutable truth but the outcome of political and institutional power struggles and therefore open to democratic, constructive, and distributive negotiation. This paper has sought to open precisely this space of reversibility for reflection. Only by understanding why EU law and policy transformed as and in the many ways they did can we grasp how they might have developed differently and how they could and should develop in the future. Much room for further inquiry and debate remains.

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<sup>110</sup> Eklund, 'Peoples, Inhabitants and Workers' (n. 50); Eklund (ed.), *Colonialism* (n. 16).