MAX-PLANCK-INSTITUT FÜR GESELLSCHAFTSFORSCHUNG
MAX PLANCK INSTITUTE FOR THE STUDY OF SOCIETIES

MPIfG Discussion Paper 10/8

Polanyi in Brussels?
Embeddedness and the Three Dimensions of European Economic Integration

Martin Höpner and Armin Schäfer

MPIfG Discussion Paper

Martin Höpner and Armin Schäfer
Polanyi in Brussels? Embeddedness and the Three Dimensions of European Economic Integration

MPIfG Discussion Paper 10/8
Max-Planck-Institut für Gesellschaftsforschung, Köln
Max Planck Institute for the Study of Societies, Cologne
August 2010

MPIfG Discussion Paper
ISSN 0944-2073 (Print)
ISSN 1864-4325 (Internet)

© 2010 by the author(s)

Martin Höpner and Armin Schäfer are researchers at the Max Planck Institute for the Study of Societies, Cologne.

hoepner@mpifg.de

schaefer@mpifg.de

MPIfG Discussion Papers are refereed scholarly papers of the kind that are publishable in a peer-reviewed disciplinary journal. Their objective is to contribute to the cumulative improvement of theoretical knowledge. The papers can be ordered from the institute for a small fee (hard copies) or downloaded free of charge (PDF).

Downloads
www.mpifg.de
Go to *Publications / Discussion Papers*

Max-Planck-Institut für Gesellschaftsforschung
Max Planck Institute for the Study of Societies
Paulstr. 3 | 50676 Cologne | Germany

Tel. +49 221 2767-0
Fax +49 221 2767-555

www.mpifg.de
info@mpifg.de

Abstract

In a recent article, Caporaso and Tarrow have argued that the jurisprudence of the European Court of Justice (ECJ) is increasingly moving in a social policy direction that will ultimately put European politics on a "Polanyian" course. We take issue with their claim and distinguish three dimensions of European economic and social integration: market-correcting integration, market-enforcing integration, and the creation of a European area of nondiscrimination, the latter consisting of two subdimensions, namely nondiscrimination on the basis of characteristics such as gender, age, and ethnic origin, on the one hand, and nondiscriminatory transnational access to the social security systems of the member states, on the other. Increased heterogeneity among European varieties of capitalism perpetuates the different ranges and speeds of these integration dimensions. We conclude that the Polanyi-in-Brussels hypothesis is misleading. Politically enforced social integration has not made much progress in the last decades, while market-enforcing integration and European nondiscrimination policies have asymmetrically profited from "integration through law." So far, the impact of European integration on political economy has been "Hayekian" rather than "Polanyian."

Zusammenfassung

Jüngst haben Caporaso und Tarrow argumentiert, die Rechtsprechung des Europäischen Gerichtshofs (EuGH) weise zunehmend soziale Züge auf und führe dazu, dass die europäische Integration eine „Polanyische" Richtung einnehme. Wir wenden uns gegen diese These und unterscheiden drei Dimensionen der europäischen Wirtschafts- und Sozialintegration: die marktkorrigierende Integration, die marktschaffende Integration und die Schaffung eines europäischen Antidiskriminierungsraums, wobei letztere aus zwei Subdimensionen besteht, nämlich der Nichtdiskriminierung aus Gründen wie denen des Alters, der ethnischen Zugehörigkeit und des Geschlechts einerseits, und der Durchsetzung eines diskriminierungsfreien transnationalen Zugangs zu den sozialen Sicherungssystemen der Mitgliedstaaten andererseits. Die gestiegene Heterogenität europäischer Spielarten des Kapitalismus perpetuiert die unterschiedlichen Reichweiten und Geschwindigkeiten der Integration in den drei Dimensionen. Wir kommen zu dem Ergebnis, dass die „Polanyi in Brüssel"-These unzutreffend ist. Während die politisch herbeigeführte, soziale Integration kaum Fortschritte macht, profitieren die marktschaffende Integration und die europäische Antidiskriminierungspolitik von der „Integration durch Recht". Die europäische Integration trägt daher weit mehr „Hayeksche" als „Polanyische" Züge.

Contents

1 Introduction 5

2 Polanyi's double movement and Hayek's interstate federalism 7

3 Increased heterogeneity of EU member states 11

4 Three dimensions of economic and social integration 14

Market-shaping integration 14

Market-enforcing integration 17

Creation of a European area of nondiscrimination 21

5 Conclusion 23

References 28

1 Introduction

> *Above all,* The Great Transformation *tells of the conflict between the imperatives of a capitalist world economy and the pursuit of social welfare within nation-states. Polanyi's account of the 1920s and 1930s analyzes the incompatibility of international capitalist arrangements with both democracy and the social reforms that had been won by the European working classes (Block/Somers 1984: 47–48).*

> *Economically speaking, the Union remains, with its dense web of directives, and often dubious prebends, far from a perfect Hayekian order. But in its political distance from the populations over which it presides, it approaches the ideal he projected. What he did not anticipate, though it would perhaps not have surprised, and certainly not disconcerted him, is the disaffection that the regime he envisaged has aroused in the masses subject to its decisions (Anderson 2009: 541).*

In a fascinating recent article, Caporaso and Tarrow have argued that we are currently witnessing the re-embedding of markets in the European Union (EU) (Caporaso/Tarrow 2009). Drawing on Polanyi's *The Great Transformation*, they argue in *Polanyi in Brussels* that, after a period of economic liberalism and market building, the pendulum is now swinging back toward social policy and correcting markets. Just like Polanyi envisioned, they argue, free markets are so disruptive a force that eventually the demand for more regulation emerges. The term "double movement" famously captures this dynamic. Interestingly, Caporaso and Tarrow focus neither on social movements that rally against free markets nor on elected governments that are pushed by voter demand for social protection. Instead, they identify the European Court of Justice (ECJ) as the agent restricting the reach of the Common Market. This is an original argumentative move, since Scharpf has powerfully argued that the Court drives forward "negative integration" by removing obstacles to the free movement of goods, labor, capital, and services (Scharpf 1999, 2006). In contrast to this view, Caporaso and Tarrow contend that the ECJ has gradually built up an array of social rights that apply to EU citizens. From their perspective, the Luxembourg judges have taken on the task of re-embedding the market.

In this paper, we endorse Caporaso and Tarrow's approach. We share their theoretical perspective and support the claim that any empirically sound assessment of European integration has to consider the rulings of the European Court of Justice. However, despite this agreement, we come to conclusions that differ starkly from theirs. We contend that the European Union is beginning to resemble Hayek's blueprint of "interstate federalism," where individual (economic and social) rights are located at the central level while the capacity for taxation and redistribution remains entirely decentralized. Hayek and other economic liberals thought that this particular division of competencies would best guard against excessive taxation and undue interventionism, as the constituent states would be forced to compete for mobile resources. What for Caporaso and

We thank Jens Beckert, Jason Beckfield, Dirk de Bievre, Miriam Hartlapp, Daniel Mertens, Daniel Seikel, Oliver Treib, and Benjamin Werner for their very helpful comments on an earlier version of this paper.

Tarrow appears to be the nucleus of supranational social policy might turn out to be a recipe for less social protection and redistribution at the national level.

We object to the interpretation put forward in *Polanyi in Brussels* not so much for what the authors say but for what they omit. Caporaso and Tarrow's empirical account is largely correct but radically incomplete. This is so for three interrelated reasons. First, they equate individual social rights with social policy and embeddedness. However, granting non-nationals access to social transfers without being able to oblige them to contribute financially creates a pressure to reduce generosity for all entitled persons. Divorcing rights and obligations limits the capacity for redistribution – as economic liberals have aptly observed. What is more, social policy that results from Court rulings may seem to be business as usual from a US perspective, but it is much less so from a European perspective. In most European countries, "politics against markets" has been the result of collective political struggles rather than of lawsuits (Esping-Andersen 1985). This is an important difference because adjudication is limited in what it can achieve. Both the US Supreme Court and the European Court of Justice have done much to fight discrimination; yet, they are ill-equipped to create schemes for redistribution or, for that matter, to put an end to regime competition in areas such as taxation.

Second, Caporaso and Tarrow mainly focus on *one subdimension* of EU social policy, that is, they concentrate on the free movement of labor. Admittedly, the ECJ has granted social rights not only to workers who cross borders but also to their dependents and, thus, infused social content into the principle of free movement. Yet, this is only part of the story. To get the full picture, we need to look at three dimensions of European integration: market-shaping, positive integration; market-enhancing integration; and the creation of a European area of nondiscrimination. The latter dimension includes both transnational access to national systems of social protection and, more broadly, rulings that ban discrimination based on nationality, gender, age, religion, sexual orientation, and so forth. Taking these three dimensions into account explains, we contend, much of the dynamic of European integration over recent years. Our account shows that political initiatives to re-embed markets have become extremely difficult as EU members have grown ever more diverse. With each round of enlargement, differences between the welfare and production regimes have increased, and whatever interest in harmonizing social policy might have existed in the past has vanished (on the politics of enlargement, see Schimmelfennig 2001). As a result, member states focus on "soft coordination" rather than legislation. In contrast, economic liberalization has continued apace, not least through ECJ rulings. In a number of noteworthy decisions, the Court has pushed liberalization further ahead than what has been deemed possible and, indeed, supported politically. It is in line with this wide-ranging interpretation of the principle of free movement that the ECJ also bolsters individual mobility and bans discriminatory practices.

Third, Caporaso and Tarrow's reading of Polanyi is selective. While this in itself is not problematic, it does come at a price. It is true that Polanyi points at politically produc-

tive ways to re-embed markets, mainly the New Deal in the United States and international cooperation. However, the bulk of *The Great Transformation* seeks to explain the collapse of democracy and the rise of authoritarian rule in the 1920s and 1930s. Looking at Polanyi's arguments in more detail shows that the double movement takes place neither automatically nor smoothly, but that it is loaded with political conflict (Beckert 2009: 51). In the interwar period, the impulses for and against free markets could not be resolved in any productive way. Instead, fascism resolved the deadlock between the two contending sides of the double movement – capitalism and democracy – by eradicating the latter. Hence, the degree to which markets are embedded remains a politically salient question even today. Admittedly, the situation in present-day Europe does not resemble the 1920s. Yet, we witness xenophobic and nationalist reactions against labor mobility and migration: those who perceive open borders as a threat turn against European integration and look for other sources to protect themselves from market vagaries. Too narrow a view of the double movement cannot account for these developments.

Our argument is presented in four steps. In the next section, we engage in a theoretical discussion of Polanyi's core concepts of embeddedness and the double movement to see how these can contribute to understanding EU politics today. In the following empirical sections, we first document the enormous heterogeneity among EU member states in terms of social models and varieties of capitalism. These differences have reached unprecedented levels in the wake of Eastern enlargement and render common political projects such as social policy harmonization unlikely. Subsequently, we outline three dimensions of European integration: market-shaping integration, market-enhancing integration, and the creation of a European area of nondiscrimination. Analyzing these three dimensions together leads to a different view of the dynamic of disembedding and re-embedding markets in the European Union than the one presented in *Polanyi in Brussels*. We argue that the main effect of European integration is still overwhelmingly to set markets free rather than to constrain them. Caporaso and Tarrow are waiting for Polanyi while the setting is Hayekian. Finally, we link these developments to the rise of EU-skeptical sentiments among those most vulnerable to markets and to the danger of "negative politicization." We contend that the failure to transnationally re-embed markets leads to political consequences that threaten further progress towards political integration.

2 Polanyi's double movement and Hayek's interstate federalism

Drawing on Polanyi, Caporaso and Tarrow argue that a double movement has begun to unfold in the European Union over the last two decades. Although European integration is still centered on unifying markets cross-nationally, the European Court of Justice has recently taken on the task "to embed the market within its understanding of legitimate social purposes" (Caporaso/Tarrow 2009: 598). In a number of decisions, the ECJ extended social rights to EU citizens in general, rather than to workers only, as

in the past. These decisions go beyond the ambition to facilitate labor mobility and can therefore be seen as an instance of re-embedding markets. We contend, however, that this view is neither theoretically convincing nor empirically accurate. From our point of view, Caporaso and Tarrow fall short of fully exploiting Polanyi's insights, as they stick to an oversimplified version of embeddedness and the double movement.[1] A closer look at how Polanyi understood these concepts reveals three points that make them relevant for today's EU: the separation of politics from the economy; the interplay of the international economic regime and domestic politics; and the tension between free markets and democracy. After sketching a different interpretation of Polanyi's work in this section, we go on to empirically challenge the idea that "a structure of supranational embedded liberal compromises" (ibid.: 594) is emerging in the European Union.

Karl Polanyi wrote *The Great Transformation* during World War II. In this book he tries to understand why democracy collapsed during the 1920s and 1930s and gave rise to fascism and "wars of an unprecedented type" (Polanyi 1957: 4). Polanyi's answer is that "the origins of the cataclysm lay in the utopian endeavor of economic liberalism to set up a self-regulating market system" (ibid.: 29). Economic liberalism, so Polanyi's core argument, entails the "stark utopia" that everything should be tradable – even labor, land, and money – although for him these "are obviously *not* commodities" and to "include them in the market mechanism means to subordinate the substance of society itself to the laws of the market." He goes on to call this the "commodity fiction," which is vital for a market society dominated by the principle that "no arrangement or behavior should be allowed to exist that might prevent the actual functioning of the market mechanism" (ibid.: 71–73). Accordingly, markets have to be shielded against political interventionism and against any tampering with the price mechanism. A self-regulating market necessitates the separation of politics and the economy, and means "no less than the running of society as an adjunct to the market. Instead of economy being embedded in social relations, social relations are embedded in the economic system" (ibid.: 57).

In the end, however, disembedded markets are unsustainable because they threaten to destroy society. Left to its own, the "satanic mill" of the market leads to a degree of social dislocation that no society can bear for long. Eventually, a countermovement against liberalization will seek to decommodify fictitious commodities. Polanyi uses the term "double movement" to capture the dynamic of the quest for free markets and the demand for protection (ibid.: 132). Insofar as the countermovement succeeds, however, it undermines the efficiency of the market and might therefore exacerbate the economic situation of those who looked for social protection in the first place (ibid.: 307).[2] Protective measures are "the only means to save society from destruction through the blind action of the market mechanism" but these measures are "directly responsible for the

1 For an interesting discussion on different understandings of "embeddedness," see Krippner (2004) and the other contributions to the "Polanyi symposium" in the same issue.

2 On this point, Polanyi seems to accept economic orthodoxy. For further discussion, see Dale (2008: 512–513).

aggravation of slumps and the restriction of trade" (Polanyi cited in Dale 2008: 501). The double movement does not simply balance efficiency and equity but refers to contradictory impulses that proved fatal for democracy during the interwar period.

While governments in the 1920s defended the market system – with the gold standard, free trade, and competitive labor markets at its core – the demand for social protection grew at the same time. Governments' commitment to fixed exchange rates even at the price of falling wages, rising unemployment, and human misery radicalized the left in Europe. Due to universal suffrage introduced in many countries after World War I, the labor movement was in a position to push for more far-reaching interventions, which threatened to undermine the market. In this situation, Polanyi concludes, the tension between capitalism and democracy became insuperable:

> Labor entrenched itself in parliament where its numbers gave it weight, capitalists built industry into a fortress from which to lord the land. […] The captains of industry were subverting the population from allegiance to their own freely elected rulers, while democratic bodies carried on warfare against the industrial system on which everybody's livelihood depended.
> (Polanyi 1957: 235–236)

Given this irreconcilable conflict, the time was ripe for the "fascist solution," which saved the market but sacrificed democracy (ibid.: 237).

For Polanyi, the faith in self-regulating markets did not survive the cataclysm of the 1930s and 1940s. At the very end of his book, in a passage that many neo-Polanyians take as their point of departure, he outlined the contours of a new economic system. He maintained that in the future, markets would not be self-regulating: prices for land, labor, and money would no longer be exclusively fixed on the market but instead reflect political choices. Abandoning the gold standard would free governments from subjugating domestic policies to international commitments and, in turn, facilitate international cooperation. Polanyi summarized this vision as "economic collaboration of governments *and* the liberty to organize national life at will" (ibid.: 254). These insights foreshadowed the Bretton Woods system of "embedded liberalism," which reconciled international trade with the domestic capacity to intervene in markets and to correct market outcomes (Ruggie 1982).

For Caporaso and Tarrow, the postwar embedded liberalism compromise is presently being recreated at the European level, mainly through ECJ rulings. We believe, in contrast, that the EU's economic regime is closer to that of the interwar period. Albeit imperfectly, it resembles the "Conditions of Interstate Federalism" that Friedrich August Hayek outlined in 1939. In this far-sighted text, Hayek maintained that the main purpose of interstate federation is to secure peace. As a welcome side effect, however, such a federation would limit the ability of governments to tax and spend if taxation and spending were to remain the prerogative of the constituent states (Hayek 1980: 260). Factor mobility in an interstate federation would prevent undue government interference in the economy and take away the power to affect prices. For the benefits to

materialize, it is necessary that interstate grants and transfers be strictly limited and that the central state cannot collect taxes. Hayek summarizes the beneficial consequences of fiscally decentralized federation as follows:

> There seems to be little possible doubt that the scope for the regulation of economic life will be much narrower for the central government of a federation than for national states. And since … the power of the states which comprise the federation will be yet more limited, much of the interference with economic life to which we have become accustomed will be altogether impracticable under a federal organization. (Hayek 1980: 264–265)

In some important respects, the European Union comes closer to this model than most federations. While supranational actors have the means to protect the market against government intervention and to ensure price stability, the EU cannot collect taxes, transfers among the member states are very limited, and factor mobility is rising. In comparison to most national federations, the European Union is atypical since the constituent states' expenditures are not funded by revenue-sharing schemes or tax transfers from the central authority.[3] Also, the EU lacks the capacity to impose uniform employees' codetermination procedures upon firms or to create a common collective bargaining system at the European level. In fact, it comes closer to what Weingast calls "market-preserving federalism" than most other federations do (Weingast 1995).[4]

Echoing Hayek, economic liberals welcome the separation of market-making and market-shaping capacities in the European Union as a protective device for individual freedom:

> The Europe-wide economy has been substantially integrated, with historically unprecedented liberties of resource flows and trade across traditional national boundaries. Reform requires the establishment of a strong but limited central authority, empowered to enforce the openness of the economy, along with the other minimal state functions. In this way, and only in this way, can the vulnerability of the individual European to exploitation by national political units be reduced. (Buchanan 1995/1996: 266)

In other words, the specific type of economic federalism that exists in the EU is an effective way to prevent the re-embedding of markets. Nobel laureate James Buchanan clearly thinks the setting is Hayekian rather than Polanyian. Some political consequences of the "unprecedented liberties" can already be detected: as the re-embedding of the market is not forthcoming, those most vulnerable to competition start to look for more radical political answers. Those who stand to lose from free markets have grown Euroskeptic at best and nationalistic at worst.

---

3 Rodden (2003) finds that these kinds of arrangements exist in most federations. In countries that come closest to the ideal of fiscal federalism, decentralization is associated with smaller government.

4 Van Apeldoorn (2009) has characterized this constellation as an "embedded neoliberalism," in which market-embedding institutions remain at the national level, but are increasingly targeted by supranational liberalization attempts.

3 Increased heterogeneity of EU member states

In the forthcoming sections, we argue that the disembedding impact of European integration is rooted in the varying dynamics of different integration forms. What perpetuates these diverse dynamics, however, is the economic, social, and institutional heterogeneity of European varieties of capitalism. First, as market-enforcing integration continues, heterogeneity increases both competition between member states and the potential for conflict. Second, just as Hayek predicted, heterogeneity makes positive, market-restricting regulation at the European level unlikely. "It is difficult to visualize how, in a federation, agreement could be reached on the use of tariffs for the protection of particular industries," Hayek wrote; "[t]he same applies to all other forms of protection" (Hayek 1980: 263). Third, heterogeneity also decreases the likelihood of coordinated resistance to integration-enforcing ECJ case law. As a consequence, European integration provides quite different opportunity structures for those who prefer liberalization and for those who advocate market-correcting regulation.

As the Table 1 illustrates, vast differences in the levels of prosperity exist among member states. The table lists the gross domestic product per person in each member state as calculated by the purchasing power standard for 2005 (prior to the accession of Bulgaria and Romania).[5] The average of the then EU-25 was set at the value of 100. Differences in wealth reflect levels of productivity and are evident in the varying wage levels. Five countries produce a GDP per capita that is more than 20 percent above the average: Luxembourg, Denmark, Ireland, the Netherlands, and Austria. These very rich countries compare to eleven countries whose level of prosperity lies below 80 percent of the average: Portugal, Malta, and nine of the ten acceded East European transformation countries (the tenth of these, Slovenia, lying at exactly 80 percent of the average GDP). Poland, with its population of 39 million, generates a value added per capita that equals roughly half of the EU-25's average.[6]

Less than 30 percent of the annual GDP are raised as taxes and social security contributions in Latvia, Lithuania, and Romania, but the figure is more than 50 percent in Denmark and Sweden. This corresponds to the heterogeneous setups and sizes of European welfare states. The leanest welfare state and the most expansive one, measured by the sum of all social protection expenditures as a percentage of the GDP, differ by a factor

5 The purchasing power standard (PPS) is an artificial statistical currency. It enables conclusive comparisons to be drawn between economic indicators because it takes the differences between the national price levels that are not expressed in exchange rates as a starting point.

6 Hayek (1980: 263) predicted that the heterogeneity of welfare levels would impede positive, market-restricting regulation. He wrote: "the diversity of conditions and the different stages of economic development reached by the various parts of the federation will raise serious obstacles to federal legislation. Many forms of state interference, welcome in one stage of economic progress, are regarded in another as a great impediment. Even such legislation as the limitation of working hours or compulsory unemployment insurance […] will be viewed in a different light in poor and rich regions and may in the former actually harm and rouse violent opposition from the kind of people who in the richer regions demand it and profit from it."

Table 1 The heterogeneity of European varieties of capitalism (latest available data)

	GDP per capita in PPS (EU-25 = 100)	Total tax burden (incl. SSC) as % of GDP	Social protection expenditures as % of GDP	Collective bargaining coverage	Degree of trade union organization	Degree of employer organization
Austria	122.7	42.0	29.5	98.0	36.0	100.0
Belgium	117.7	45.5	29.7	90.0	47.0	82.0
Bulgaria	32.1	35.9	–	–	–	–
Cyprus	83.5	35.6	16.4	65.0	50.0	67.0
Czech Rep.	73.0	36.3	20.1	28.0	21.0	35.0
Denmark	124.2	50.3	30.9	77.0	84.0	52.0
Estonia	57.4	30.9	13.4	25.0	14.0	25.0
Finland	112.1	43.9	26.9	90.0	76.0	60.0
France	109.0	44.0	30.9	90.0	12.0	88.0
Germany	109.8	38.8	30.2	70.0	22.0	61.0
Great Britain	116.8	37.0	26.7	40.0	30.0	41.0
Greece	82.2	34.4	26.3	65.0	22.0	70.0
Hungary	60.9	38.5	21.4	40.0	18.0	40.0
Ireland	137.1	30.8	16.5	55.0	40.0	60.0
Italy	102.8	40.6	26.4	90.0	28.0	51.0
Latvia	47.1	29.4	13.4	15.0	18.0	25.0
Lithuania	52.1	28.9	13.6	10.0	11.0	20.0
Luxembourg	247.8	38.2	23.8	75.0	41.0	80.0
Malta	69.3	35.3	18.5	50.0	–	62.0
Netherlands	123.5	38.2	28.1	80.0	28.0	86.0
Poland	49.9	34.2	21.6	40.0	20.0	20.0
Portugal	71.4	35.3	24.3	75.0	16.0	34.0
Romania	34.8	28.0	–	–	–	–
Slovakia	55.1	29.3	18.4	40.0	31.0	30.0
Slovenia	80.0	40.5	24.6	98.0	45.0	40.0
Spain	98.7	35.6	19.7	80.0	16.0	52.0
Sweden	114.7	51.3	33.5	90.0	77.0	65.0

Definitions and sources of variables

GDP per capita in PPS: Gross domestic product (GDP) per capita in 2005 according to the purchasing power standard (PPS) and as a percentage of the EU-25 average (prior to the accession of Bulgaria and Romania). Source: Eurostat: Europa in Zahlen – Eurostat Jahrbuch 2006–07, Luxembourg 2007, p. 152.

Total tax burden (incl. SSC) as % of GDP: Sum of each state's revenue from taxes and social security contributions (SSC) as a percentage of the gross domestic product in 2005. Source: Eurostat: Taxation Trends in the European Union: Data for the EU Member States and Norway, Luxembourg 2007, p. 237.

Social protection expenditures as % of GDP: Sum of all social protection expenditures as a percentage of the gross domestic product for 2003. Cyprus: Entry is based on figures from 2002. Source: Eurostat: Europa in Zahlen, 2007, p. 126.

Collective bargaining coverage: Percentage of employees covered by wage agreements. Various survey years in the 2000s. Source: Nobert Kluge/Michael Stollt: The European Company: Prospects for Worker Board-Level Participation in the Enlarged EU, Brussels 2006, pp. 64–65.

Degree of trade union organization: Percentage of union-organized labor in the entire labor force (excluding retirees). Various survey years in the 2000s. Source: European Commission: Industrial Relation in Europe 2006, Brussels 2006, p. 26.

Degree of employer organization: Percentage of the labor force whose employers are members of an employers' association. Various survey years in the 2000s. Source: European Commission: Industrial Relations, 2006, figure 1.2.

of 2.5. Moreover, it is hard to imagine more diversity among the institutional premises of organized social partnership than those that exist now. With regard to the degree of union organization in the labor force (excluding retirees), national figures range from lows of 11 percent (Latvia) and 12 percent (France) to highs of 77 percent (Sweden) and 84 percent (Denmark). The data in the table also show a similar situation for the degree of organization of employer associations, as well as the percentage of employees covered by collective agreements above the firm level.

Member state heterogeneity fuels political conflict in the EU. Hooghe and Marks show that an unprecedented degree of politicization over European integration has taken place in recent years (Hooghe/Marks 2009). Several highly politicized controversies over European issues can be traced back to conflicts involving opposing economic interests, and an increasing number of them arise from different levels of economic welfare. The controversies over the Services Directive[7] and over the series of ECJ judgments starting with *Viking* (ECJ C-438/05, Viking) and *Laval* (ECJ C-341/05, Laval) deal with the question of how far companies from new member states are allowed to exploit the competitive advantage gained by lower wages and labor standards when posting their employees to the high-wage economies of the old member states.

Further conflicts of interest result from the *institutional* heterogeneity of European welfare states and varieties of capitalism that would exist even if the levels of welfare among EU member states were more or less equal.[8] In the European Union, we not only find several "worlds of welfare capitalism," but also different forms of corporate governance and of industrial relations (Esping-Andersen 1990; Hall/Soskice 2001). Differences between these were found, for example, at the heart of disputes over both the European Takeover Directive and the "golden shares" rulings, in which the ECJ reinforced the free movement of capital.[9] Generally, within the EU-27, opposing interests have to be balanced out that go deeper than those of the comparably homogeneous community of the EEC-6 or the later EC/EU-12 or EU-15.

What is decisive for our purpose is not just that the worlds of welfare and varieties of capitalism of member states differ so much as to render talk about the European social model misleading (for empirical proof, see Alber 2006) but, more importantly, that this

7 Basically, the controversy centers on the question of how far labor and social rights may be transferred to temporarily posted employees from other member states. The fewer the alternatives the host countries have to act, the greater will be the competitive advantage of the posting countries, whose labor standards are lower and wage costs more favorable. It is widely held that critical assessments of the Services Directive were in part responsible for the rejection of the constitutional treaty in the 2005 French referendum.

8 Optimists might argue that welfare differences among EU members are about to vanish in the medium term. Even if this were true, institutional differences – different forms of welfare state organization, wage determination, company organization, and so forth – are likely to persist or to converge much more slowly, and to generate political conflict over harmonization attempts.

9 Golden shares are nominal shares with special voting rights held by regional governmental bodies at the annual shareholders' meetings of (typically, privatized) enterprises.

heterogeneity hampers the opportunity to embed markets transnationally, as recent research on fiscal federalism demonstrates. The more diverse the constituent units in terms of wealth and inequality, the less likely it is that social policies will emerge at the European level (Beramendi 2007). Proponents of redistributive policies, therefore, have to direct their demands to the national level, while proponents of liberalization asymmetrically profit from the supremacy of European law (cf. the following sections).[10] The heterogeneity of European varieties of capitalism, in other words, makes it unlikely that market-enforcing and market-correcting policies will meet eye to eye. As a result, the EU's radical version of fiscal decentralization will presumably persist – unless a non-political agent takes on the task of embedding the market even against the will of governments. This agent could be the European Court of Justice, Caporaso and Tarrow suggest. We take this claim up in the next section.

4 Three dimensions of economic and social integration

To illustrate how member state heterogeneity affects various forms of integration differently, we distinguish analytically between three dimensions that all affect the extent to which markets are socially embedded: (1) market-shaping integration, (2) market-enforcing integration, and (3) the creation of a European nondiscrimination area. While the first depends primarily on political decisions, the latter two will proceed even if the political ability or will to act is absent. All three dimensions advance integration, but their scopes and speeds vary.

Market-shaping integration

In the European Union, three pillars of market-shaping integration – by which we mean integration aiming at the social embedding of markets – exist. First, in some areas of social policy the EU has the competence to legislate. Usually, legislation takes the form of Directives or Regulations that are binding and subject to judicial review. However, from the outset, progress in market-shaping integration through binding agreements was slow and severely limited in scope. In response, governments developed an alternative instrument in the late 1990s – the Open Method of Coordination (OMC). The OMC centers on mutual learning and voluntary adjustments. In this second pillar, non-compliance has no legal consequences, and there is a prerogative of national policy-making (in line with the principle of "subsidiarity"). The switch from binding to voluntary cooperation

10 Cf. our conclusion, where we argue that the asymmetric usability of the European opportunity structure promotes nationalist counter-reactions among those who do not profit from the progress of market-enforcing integration.

has made it possible to deal with many more aspects of social policy at the EU level – without, however, establishing common minimum standards or alleviating competitive pressure. The third pillar consists of the so-called "social dialog" of capital and labor. In principle, their negotiations can lead to binding law, too, but the social partners are also free to rely on soft forms of agreement. In fact, they have substituted the latter for the former in recent years. Let us look at these three pillars in a little more detail.

A limited number of competencies to correct markets were already included in the Treaty of Rome (1957), which laid the foundations for the European Union. These focused on gender equality (Art. 141–43, EEC) and on portability of social security entitlements to facilitate the free movement of labor (Arts. 48–51, EEC). At the time, however, the national capacity to develop social policy was not in doubt and governments had little incentive to transfer additional competencies to the European level. All major welfare programs – such as pensions, unemployment insurance, or health care – remained firmly under national control. With later Treaty amendments, the Community gained more competencies, mainly in labor law. In particular, working conditions, information and consultation of workers, and equal treatment of women and men became a subject of European regulation (for a detailed exposition of this development, see Leibfried/Pierson 1995; Leibfried 2000). In those areas where the Community had gained competencies and the Council of Ministers decided with qualified majority, a fair degree of harmonization of national social policy has taken place through the European Union. Although limited in scope, European law has repeatedly made changes necessary, even in mature welfare states (Falkner et al. 2005: ch. 2).

Attempts to expand European competencies beyond labor law and gender equality have largely been unsuccessful. As a consequence – and this is the second pillar of market-shaping integration –, governments began to resort to types of "soft" coordination in the late 1990s. In 1997, the Amsterdam Treaty introduced the OMC, which was spelled out in detail later the same year at the Luxembourg summit (Goethschy 1999; Tholoniat 2010). Core elements of the OMC consist of periodically defined common European policy goals, which are to be implemented by each of the member states using measures suitable to each country's situation. Mutual exchange between member states is supposed to provide insight into the "externalities" of domestic decisions, trigger common perceptions, and facilitate reforms. In order to encourage learning, the Commission reports on the progress made, and "peer reviews" take place regularly (for details on the procedure, see Schäfer 2006). However, besides this exercise in "naming and shaming," no sanctions are available if a member state fails to comply. Both the European Court of Justice and the European Parliament are excluded from the OMC.

In the year 2000, the OMC became closely linked to the "Lisbon Strategy," which announced that the EU would turn into the most competitive economic region of the world within ten years. While this clearly has not materialized, there is a good deal of

disagreement in the literature about what the OMC has achieved.[11] Certainly, the OMC has allowed member states to "agree to disagree" and to nonetheless cooperate. In this way, new areas of social policy have become subject to an exchange of opinions and the desire for mutual learning, while soft coordination has widened the EU's social policy agenda. However, there are limits to what the OMC can achieve. First, it cannot enforce policy change and depends for its success on the voluntary compliance of governments. Yet, national actors do not seem ready to alter their own economic strategy to meet the concerns of competitors, either with regard to wages or taxes. Second, the gist of the Lisbon Strategy is to promote employability and to make people fit for the market. Activation, lifelong learning, and flexicurity – whatever else their merits are – do not seek to protect labor from the labor market but to include in it as many people as possible. If the OMC proves successful, it will further commodify the "fictitious commodity" labor.

Social dialog represents the third pillar of market-shaping integration. The EU has long propagated corporatist policy-making as a principle at the EU level. Yet lip service to social dialog had few real-world consequences prior to the 1990s (Streeck 1995). With the Maastricht Treaty, this began to change. Social partner organizations at the EU level – trade unions, employers, and industrial associations – were given the opportunity to work out Directives themselves that the Council could subsequently turn into binding legislation (Falkner 1998). During the 1990s, several so-called "social partner Directives" came into being, and it seemed that a new instrument for embedding the market had been found. Since then, however, social dialog has lost its momentum. During the last decade, the social partners – mainly employers – have no longer been committed to advancing binding agreements. Instead, they rely on the same type of "soft coordination" as governments do – substituting "declarations of intent" for legislative proposals (Schäfer /Leiber 2009). The reason is that trade unions and employer federations are – just like governments in the Council – confronted with growing interest heterogeneity they find increasingly difficult to overcome.

In sum, the European Union holds a number of market-shaping instruments for promoting social policy harmonization. Yet, if these rely on hard law, their scope is limited mainly to gender equality and labor law. Soft law, in contrast, can be used in highly diverse policy fields because it does not necessitate change. Not only the Council of Ministers but also the social partners readily rely on it given the diversity of their members' interests. As a consequence, the potential for "positive integration" and market-shaping interventions is still limited and will most likely stay so as the EU grows more diverse. We conclude that if Polanyi is about to emerge in Brussels, it is certainly not the market-shaping dimension of European integration that is involved. In contrast, market-enforcing integration, to which we turn now, does not depend on political consensus and continues apace.

11 For recent discussions of the OMC's achievements, see Heidenreich (2009); Zeitlin (2005); (2008); Kröger (2009); Tholoniat (2010).

Market-enforcing integration

The dynamics of market-restricting and market-enforcing integration differ significantly. The reasons are that the removal of market-restricting regulations can be enforced judicially, and that the heterogeneity of European varieties of capitalism does not impede, but presumably even promotes, this so-called "integration through law." Already in the 1960s, the European Court of Justice ruled that the economic freedoms provided market participants with rights vis-à-vis their member states *(direct effect)*, and that European law generally overrides national law *(supremacy)* (ECJ C-26/62, van Gend/Loos; ECJ C-6/46, Costa/ENEL; cf. Alter 2001; Alter/Meunier-Aitsahalia 2004). Armed with supremacy, European competition law became a live weapon in the hands of supranational actors, because, from now on, it could potentially be used to liberalize economic sectors for which it had initially not been made, namely third-sector areas providing public goods and services, such as telecommunications, energy, and transportation (see Scharpf 1994, 1999: ch. 2; Eising 2002: 92–95; Thatcher 2007). It took, however, more than twenty years until the Commission began to set up treaty violation proceedings in order to break up state monopolies in third-sector areas. More and more areas were being discovered in which this body of law could be applied. For example, current legal disputes involve public banking, public broadcasting, and hospitals, and in all of these cases the semi-public organization of the respective sectors has, beyond other aims, a social purpose (see, for example, Grossman 2006 on public banking; Thum 2007 on public broadcasting; and Rinken and Kellmer 2006 on public hospitals).

In this section we show that a similarly wide-ranging reinterpretation of the common market principles has taken place. Initially, the "four freedoms" – the free movement of goods, capital, services, and persons – aimed at guaranteeing discrimination-free transnational access to the member states' markets. Since its pathbreaking *Dassonville* and *Cassis de Dijon* decisions, however, the Court has replaced the principle of non-discrimination by the principle of non-restriction (ECJ C-120/78, Cassis de Dijon; ECJ C-8/74, Dassonville). According to the latter principle, every national regulation that restricts the transnational exercise of one of the four "economic freedoms" is in potential violation of European law, even if the regulation is discrimination-free, i.e., imposed equally on nationals and non-nationals alike. This reinterpretation has far-reaching implications for the scope of market-creating integration. Interpreted as individual rights for restriction-free market action, the "four freedoms" can now be used not merely to eliminate disguised protectionism on the part of the member states, but rather to target a wide variety of member states' political regulations as obstacles to European law. Furthermore, this line of ECJ rulings not only targets political regulation but also – due to the horizontal effect of European law – the actions of private bodies such as firms or trade unions.

We provide three examples from the ECJ jurisprudence of the last decade relating to corporate law, labor dispute law, and tax regulation. The examples illustrate that market-making integration systematically tackles national regulations with "social content." Therefore, in order to assess the value of the Polanyi-in-Brussels thesis, the consequenc-

es of market-enhancing integration have to be taken into account. We argue that the practical impact of market-creating "integration through law" on social matters goes far beyond the impact that both soft coordination and the European social dialog have had in the past and are likely to have in the foreseeable future.

Our first example for the social impact of market-enforcing integration is the liberalization of corporate law initiated by the ECJ. Until the end of the 1990s, it was deemed agreed that European law was not an obstacle to applying the so-called "company seat theory" or "real seat doctrine." This doctrine stated that the legal status of a company was not based on the place it was established, but on the place where the actual company headquarter was located. In other words, if the seat of a company was in Germany, its internal matters were governed by German law. Assuming that – as Dammann puts it – headquarter relocation costs usually outweigh the advantages of a more attractive corporate law, firms usually had no choice but to accept the respective body of regulation (see Dammann 2003: 611).

The ECJ overturned the application of the company seat doctrine in its rulings on *Centros, Überseering,* and *Inspire Art* (ECJ C-212/97, Centros; ECJ C-208/00, Überseering; ECJ C-167/01, Inspire Art). In the view of the Court, the application of this theory violated the European freedom of establishment, and the judges saw no overriding reasons of general public interest to justify this violation. In particular, the Court ruled that the establishment of foreign letterbox firms (in which the company seat has no practical meaning for the economic activities of the business) is protected by European law. In practice, this implies that entrepreneurs now have the freedom to choose whichever legal form among the entire EU-27 they deem appropriate when founding a company (for the details, cf. Deakin 2009; Siems 2002).

The freedom to circumvent national corporate law has consequences for core elements of the production models of member states. For example, if a company's seat is in Germany but it does not choose the German legal form, management board codetermination does not apply when the company grows beyond the size of 500 or 2,000 employees.[12] This is not just a theoretical possibility, as recent experiences demonstrate. The Court's corporate law decisions have led to a boom of firms with foreign legal forms in Germany. In most of the cases, the respective firms do not exceed the number of 500 or even 2,000 employees. However, codetermination is affected in several cases, and their number is increasing. Sick finds that from December 2006 to November 2009, the number of cases relevant to codetermination (i.e., firms of more than 500 employees) increased from 17 to 37 (see the data provided in Sick 2010). In effect, the ECJ has transformed German supervisory board codetermination, generally perceived as a key element of Germany's *Soziale Marktwirtschaft*, from an obligatory to a voluntary institution.

12 In Germany with its far-reaching codetermination legislation, supervisory board codetermination sets in when firms have more than 500 employees, and the ratio of employees' supervisory board seats increases from one third to a half of all seats when the number of employees grows beyond 2,000 employees.

The ECJ decisions on *Viking*, *Laval*, and *Rüffert*[13] – our second example – have recently received much attention because they were interpreted as landmark decisions on the struggle between economic freedoms and social regulation in the European common market. In the context of our discussion, two aspects are of particular importance. The first aspect is the re-interpretation of the Posted Workers Directive from 1996 (Directive 1996/71/EC). In Article 3 (1), this directive lists a number of mandatory rules for posted workers' minimum protection on matters such as pay, rest periods, and holidays, while Article 3 (7) explicitly states that this minimum protection in force in the host country "shall not prevent application of terms and conditions of employment which are more favourable to workers." In *Laval*, however, the Court referred to the list in Article 3 (1) as defining the *ceiling* on the *maximum* standards that member states are allowed to impose on posted employees from other EU member states (see Kilpatrick 2009: 845–849). With this judicial re-interpretation, the Court effectively limited the host countries' room for maneuver for preventing races to the bottom in the field of labor standards, a problem that is set to become increasingly prevalent as heterogeneity among member states increases.

A second aspect of these judicial innovations is equally relevant for our discussion: the Court expanded the so-called horizontal or "third-party" effect of the European market freedoms to private parties, which implies that European law not only obliges member states, but also private bodies (such as industry associations and trade unions) to refrain from actions that might restrict the fundamental market freedoms. In the decisions on the *Viking* and *Laval* cases, the Court ruled that trade unions are obliged not to hinder or block transnational economic activity by collective action, such as strikes, unless the labor conflicts passed the requirements of the so-called "Gebhard formula." According to this formula, a restriction of market freedoms is acceptable only if it (a) pursues a legitimate aim compatible with the Treaty, (b) is justified by overriding reasons of public interest, (c) is suitable for securing the attainment of the objective pursued, and (d) the restriction does not go beyond what is necessary to obtain the legitimate aim (first introduced in ECJ C-55/94, Gebhard). Until *Laval*, few observers would have argued that restricting disputes among the social partners was among the aims of the European market freedoms (for the details, see Joerges/Rödl 2009). As a matter of fact, Article 153 (5) of the Lisbon Treaty states that the treaty provisions do not apply to "the right to strike or the right to impose lock-outs."

Our third example for the social impact of market-creating ECJ case law concerns tax law, in particular the law on corporate income taxes. Common market integration opens up loopholes for tax avoidance. Firms transfer profits and losses across national borders to minimize the tax burden. In a series of decisions such as *Cadbury Schweppes* and *Marks & Spencer*, the ECJ ruled that the common market logic legitimized such

13 ECJ C-346/06, Rüffert. In the *Rüffert* case, the ECJ declared public contract bids in which the contracted companies were obliged to pay no less than the regionally customary wage as a violation of the freedom of services.

tax-avoidance practices and that national efforts to restrict them were not justified by overriding reasons of the public interest.[14] By handing down these decisions, the ECJ has fueled inner-European tax competition, while diverging national interests have prevented the member states from being able to agree on a political solution to contain competition. The more heterogeneous the tax systems of the member states are, the more intense the tax competition becomes, and the more unlikely it is that political harmonization efforts succeed.[15]

As Ganghof and Genschel have shown, the practical problem with the increase of inner-European tax competition is not its direct effect on company tax revenue (Ganghof / Genschel 2008). So far, the broadening of corporate tax bases has prevented a dramatic fall of tax revenues. More important is the indirect effect of corporate tax competition on personal income taxes. Because firms can be used as tax shelters of personal income, the corporate tax has a protective function for the personal income tax (the so-called "backstop function"). As tax competition pushes nominal corporate tax rates down, the backstop function is undermined. In this situation, governments have two options: they can accept a widening tax rate gap between corporate tax rates and top personal tax rates, thereby opening up loopholes for top earners, or they can limit the progressivity of the personal income tax. Corporate tax competition, in short, constrains the progressivity of the income tax. Therefore, it constrains member states' redistributive capacity. Rather than socially embedding the market, this line of ECJ case law undermines policies that aim at correcting market outcomes in order to achieve redistribution.

Unlike political integration that can easily fall prey to conflicting interests and political blockades, "integration through law" is not negatively affected by increasing heterogeneity. In fact, the opposite may hold true, for two different reasons. First, with a higher potential for conflicts and more cross-border economic transactions, the probability of legal disputes increases. Accordingly, the ECJ will be asked to adjudicate conflicting claims more often and, thus, have further opportunities to tackle restrictions to the four freedoms.[16] Second, as heterogeneity among rule-takers rises, the probability of coordinated resistance to judicial overinterpretation of the fundamental market freedoms should be in decline, and if it is true that the ECJ accounts for likely reactions to its jurisprudence, decreased likelihood of coordinated resistance should increase the Court's zone of discretion.[17] Therefore, increased heterogeneity might be among the causes for the recent

14 ECJ 196/04, Cadbury Schweppes; ECJ 446/03, Marks & Spencer. For an overview on this line of ECJ case law, see Graetz and Warren (2006).

15 Genschel, Kemmerling and Seils (2010) provide empirical proof that the intensity of tax competition between European countries is greater than in the rest of the world. In this policy field, the EU does not shelter member states from globalization, but rather increases its magnitude.

16 For example, Stone Sweet and Caporaso (1996) show that over time, a linear relationship exists between the amount of transnational economic transactions and the pressure exerted by private suitors who demand supranational rules; see also Stone Sweet and Brunell (1998), and Carruba and Murrah (2005).

17 See Pollack (1997); Alter (2001: chs. 2 and 5); Maduro (1998: ch. 3 on "majoritarian activism").

"radicalization" of common market integration that some authors have criticized after the ECJ rulings on *Viking* and *Laval (*see, in particular, Joerges/Rödl 2009; Scharpf 2009).

Creation of a European area of nondiscrimination

Significant progress has also been achieved in a third dimension of integration: the creation of a European area of nondiscrimination. We distinguish two sub-dimensions of this form of integration: protection against discrimination based on characteristics such as gender, age, and ethnicity, on the one hand, and discrimination-free transnational access to the social security systems of the member states, on the other.

In many member states, the improvement in protection against discrimination based on gender, age, sexual orientation, ethnic origin, or religious affiliation is attributable to the European Union. This is particularly true for protection against on-the-job discrimination and against discrimination blocking access to labor markets. While such policies are not redistributive, they have "social content" because they protect market participants who would be likely to perform worse if discrimination were legal. Both European politics and judicial case law are responsible for these successes. For example, it is to the credit of the Commission's negotiation skills that four anti-discrimination directives were passed in the years 2000 to 2004 (Directives 2000/43/EC, 2000/78/EC, 2002/73/EC, and 2004/113/EC).

Even if the relative importance of political agreements in creating European anti-discrimination policy is greater than in the case of the above-mentioned measures in market-enforcing policy, we should not underestimate the major role case law has played in formulating European equal treatment policy. On the basis of comparatively few clauses in the European treaties – in particular, the principle of gender wage equality and the free movement of workers – the ECJ has developed a far-reaching anti-discrimination jurisprudence that has had an impact in all member states. Examples of the most recent case law are the *Mangold* decision, in which the ECJ overruled an element of the German labor market reforms that aimed at more flexible fixed-term contracts for older employees; the *Maruko* decision, which came down against the refusal to award survivor pensions to homosexual partners; and the *Coleman* decision, in which the ECJ expanded previous case law governing the workplace to cover also family members of employees (ECJ C-144/04, Mangold; ECJ C-2676/06, Maruko; ECJ C-303/06, Coleman). Many other examples for the extensive equal treatment case law of the ECJ could be mentioned.[18] We will return to this subdimension of European integration in our conclusion.

18 See, for example, Brzezinska (2009) on protection against gender discrimination, and Zuleeg (1999) on gender equality jurisprudence.

We now arrive at the subdimension of European integration on which Caporaso and Tarrow exclusively built their Polanyi-in-Brussels argument, namely judicially enforced, discrimination-free transnational access to the social security systems of member states, including their healthcare systems.[19] Caporaso and Tarrow convincingly distinguish three phases of this jurisprudence: first, a market-creating phase in which the member states were obliged to remove protectionist barriers against the free movement of workers; second, a phase in which the ECJ began to open up national social security systems for migrant workers; and, third, a phase in which the Court opened up the respective social systems to family members as well, even if they did not live in the territory of the respective state (Caporaso/Tarrow 2009: 605–611).

We agree with Caporaso and Tarrow that this line of ECJ case law represents an independent and important (sub)dimension of European integration. Actually, we would go even further and emphasize that the ECJ has gradually liberated individual social rights in the European Union from the long-standing and often criticized restriction that they refer exclusively to workers. The rights of common market citizens have increasingly been transformed into general rights of EU citizens. The ECJ has succeeded in making this transition by linking the freedom of movement (Art. 21 TFEU) to the ban on discrimination based on nationality (Art. 18 TFEU). Any EU citizen who legally resides in another member country must not be treated any differently than citizens of that country. According to this legal doctrine, EU citizens have the right, in principle, to also claim social benefits in EU countries other than their original homeland, irrespective of the fact that they may have not made financial contributions to the respective social security system. In the famous *Grzelczyk* decision, the ECJ emphasized that the requirement for members of one state to extend financial solidarity to those of other member states grows out of Community law, as long as this requirement does not unduly burden the finances of the host country (ECJ C-184/99, Grzelczyk). With this expansion of social rights, the Court struck down the solidarity norm accepted until then by the member states, which linked the right to residency to a denial of any claims to social benefits during the duration of residency and to a requirement to have comprehensive health insurance coverage.

While increasing transnational access to national social security systems is a remarkable development, we disagree with Caporaso and Tarrow's claim that this line of ECJ case law represents a European countermovement that re-embeds the market. First, as we have demonstrated, evaluating the EU's impact on the embedding and disembedding of markets requires considering the whole set of European economic and social policies, including the social impact of market-making ECJ decisions. Second, even when evaluating the judicially enforced transnational opening of the national social security systems in isolation, Caporaso and Tarrow's reading is much too optimistic, as they fail to fully take its complex repercussions in the member states into account.

---

19 This line of case law is also traced in Obermaier (2008). With respect to the cross-border provision of healthcare, see Martinsen (2009).

From a migrant worker's point of view, this line of ECJ case law increases the availability of social benefits. In this sense, it undeniably has social content. This, however, comes at a price: those who finance social security cannot be treated differently from those who do not. As Caporaso and Tarrow note, the Court "weaken[s] the link between national payment and national consumption" (Caporaso/Tarrow 2009: 609). Although Art. 20 TFEU speaks of the rights *and obligations* that evolve from EU citizenship, there is little likelihood of imposing obligations on those who profit from newly attained social rights. The outcome may be that both the effectiveness and the legitimacy of national social policy come under pressure. Governments may ignore the declining effectiveness and legitimacy of welfare state arrangements, or – as Scharpf has pessimistically argued in two recent articles – they may react by retrenching (see Scharpf 2008, 2009: 13–19). The latter option may be unlikely as long as the transnational use of national social security and healthcare systems is the exception to the rule. It becomes more likely, however, with growing inner-European migration. Differences in wages and welfare state generosity provide incentives in particular for citizens of the new member states to move westwards.[20] Therefore, granting individual transnational access to social security and healthcare systems must not be confused with the establishment of social policies at the European level. To us, the possibility that this line of ECJ case law will trigger welfare state retrenchment is *at least* as plausible as a perspective that interprets it as the nucleus of an emerging European welfare state.

5 Conclusion

In this paper, we took issue with Caporaso and Tarrow's claim that the European Union has entered a phase of increasing social, "Polanyian" market embedding mainly triggered by ECJ case law. Their argument is based on a number of assumptions, observations, and interpretations, some of which we accept, and others of which we reject. First and most importantly, we agree that a political-economic perspective is crucial for an understanding of the recent phase of European integration. As Hooghe and Marks have pointed out in their seminal article on "The Making of a Polity," European politics in the post-Maastricht phase affects two conflict lines that must be distinguished analytically: the conflict between national and supranational competencies, and the conflict between regulated and neoliberal capitalism (Hooghe/Marks 1999). Even if we disagree about whether European integration embeds the economy in social relations, or whether society is run as an adjunct to the market, we fully agree that European politics does not leave this conflict untouched.

20 Immigration in the EU is rising steadily. In 2006, 3.5 million people settled in a new country of residence in the EU-27. 1.7 million of these were EU citizens. In a single year, more than 300,000 EU citizens moved to Germany and Spain, more than 100,000 to Italy and the UK. Roughly 300,000 Poles and well over 200,000 Romanians left their country in 2006. See Eurostat (2008).

Second, we also agree that European integration alters regulation and redistribution practices, even in areas where European politics lack competencies, such as tax policies, codetermination practices, or healthcare. This may happen indirectly or directly (Leibfried/Pierson 1995). Indirect effects arise from increased competition such as the declining redistributive capacity of personal income taxation that is brought about by rising inner-European capital tax competition. Direct effects arise from the judicial activism of the Commission and the Court such as, for example, the subordination of labor dispute law under the fundamental economic freedoms. This leads us to the third point in which we fully agree with Caporaso and Tarrow: the ECJ has become a proactive player where social and economic integration is concerned. "Integration through law" has to be taken into account when the dynamics and outcomes of integration are analyzed. While this proposition may be consensual in theory, much research still focuses exclusively on directives and soft coordination. And, in our view, Caporaso and Tarrow are also right when they emphasize the remarkable degree to which the ECJ has emancipated its jurisprudence from the written content of the European treaties. As they put it, many innovations of European law have been "progressively read into" the treaties by the Luxembourg judges (Caporaso/Tarrow 2009: 611).

Despite these points of agreement, we object to Caporaso and Tarrow's claim that we are witnessing "Polanyi in Brussels." Our disagreement is threefold. First, we disagree with the method from which Caporaso and Tarrow draw far-reaching conclusions. Their empirical focus is extremely narrow, as they exclusively focus on individual social rights that the ECJ grants to labor migrants and their families. Investigation of other lines of ECJ case law, such as the one on tax competition, on the right to strike, or on the member states' right to impose labor standards on posted workers would have led to quite different conclusions about the very same research question. Therefore, a well-balanced evaluation of the market-embedding or disembedding effects of European integration has to rely on a much broader empirical base.

Second, and directly following from that, we disagree with Caporaso and Tarrow's overall conclusion of a "Court-led social policy" (ibid.: 612). As we have shown in the section on market-enforcing integration, the ECJ has systematically weakened the redistributive capacity of the national tax systems, it has transformed supervisory board level codetermination from an obligatory into a voluntary institution, and it has subordinated collective labor law under the European economic freedoms. All this has to be taken into account for an evaluation of "Social Europe." However, even when analyzing the transnational opening of the social security and healthcare systems in isolation, we think that Caporaso and Tarrow are mistaken. Social policies are associated with the creation of communities that are willing and institutionally able to redistribute. Recent ECJ case law extends social rights to EU citizens, but it severs rights and obligations in doing so. Rather than being the nucleus of an emerging European welfare state, this case law might exert pressure for welfare state retrenchment.

Furthermore, increased heterogeneity both reduces the probability of any harmonization of social regulations and diminishes opportunities for coordinated resistance to market-enforcing measures introduced by the Commission and ECJ through extensive and often controversial interpretations of the European fundamental freedoms and competition law. This implies that the asymmetry between market-enforcing and market-correcting integration is being perpetuated, rather than being reduced. With the help of the OMC, the coordination of national labor standards and social regulations has become more important than in the past. Yet such coordination is still far from being in a position to work toward uniform standards applicable to all 27 EU member states or from counterbalancing market-enforcing integration.

As we have shown, there exists a further dimension to European integration that is based on both the European discrimination ban and the free movement of workers: nondiscrimination policy with respect to characteristics such as gender, age, and ethnic origin, and the case law accompanying it. The emphasis here lies in the provision of discrimination-free access to job markets and in nondiscrimination at the workplace. However, anti-discrimination policy is neither an element of nor a substitute for redistributive policy at the European level. Instead, it is a special case of equal opportunity policy: it aims to create free access to the market, unhampered by discrimination. It stands in juxtaposition to the differences between market-enforcing and market-correcting policies, because it not only enables the market but also limits it. Equal opportunity policy in the form of nondiscrimination policy aims to create *free but fair* markets.[21]

Third, we also disagree with Caporaso and Tarrow's treatment of Polanyi and his idea of a double movement of market creation and political countermeasures. As we have shown in detail, what Polanyi had in mind was not that judges balance the economic and social rights of individuals. Rather, he thought that economic liberalization brings about *political conflict* and countermovements that aim at re-embedding the market, in order to prevent the subordination of society to the economy. We believe that Caporaso and Tarrow are right when they suggest that Polanyi's insights can be fruitfully used for an analysis of the recent integration phase. However, such an analysis would have to focus on the politicization of European integration and the constructive or destructive forces that may result from it. Our thesis is that, due to lasting asymmetry between positive and negative integration, "negative politicization" might be imminent, which could eventually hurt the creation of a European-wide political community.

---

21 In a fascinating article, Piore has shown that after the decline of the American trade union movements, pro-worker collective regulations have been increasingly replaced by individual social and nondiscrimination rights, granted in part by political regulation, but also resulting from judicial activism. Interestingly, Piore has predicted that this development might spread beyond the US; see Piore (2005). It might be a typical American view, due to historical experience, to interpret individual anti-discrimination rights as a new form of or a functional substitute for social, redistributive policy. From a European point of view, social policy has had, and still has, a quite different meaning. Note, however, that Caporaso and Tarrow's argument does not rely on the progress of European equal treatment policy, but rather on the transnational opening of the social security systems of the member states.

How do the developments discussed in this paper affect the chances for political integration? We perceive two observations as important: the first concerning public reactions to the intensification of economic integration and therefore being of a "Polanyian" style, and the second concerning conflicts between member states. Compared to the phase before "Maastricht," European integration has become highly politicized. Since the 1990s, economic integration has repeatedly been at the heart of high-profile public controversies that have triggered reactions ranging from protest against the Takeover Directive or the Harbor Directive to a previously unknown degree of attention focused on economically and politically relevant ECJ rulings. One particularly pertinent example in this context is the transnational discussion on the Services Directive. In the course of the controversy, a European topic was being discussed in practically all the member states simultaneously, vehemently, and with comparable relevance (Van de Steeg/Risse 2007). Integration is perceived less and less as an apolitical, technical affair carried out on the shoulders of a foreign-policy consensus.

At the same time, the gap between European elites and the public has widened. The number of people who support European integration has notably declined since the early 1990s (Eichenberg/Dalton 2007). In many countries the general public is far more skeptical of European integration than elites are. The "permissive consensus" of the past has given way to a "constraining dissensus" and a widespread distrust of elite-driven integration (Hooghe/Marks 2009: 10–11). As a consequence, winning support for a further deepening of European integration has become difficult, as the referenda in France, the Netherlands, and Ireland on the constitutional treaty and the reform treaty have demonstrated. Yet, the growth of EU-skeptical sentiments is distributed unevenly among social groups. In particular, those who have been negatively affected by stronger competition and integrated markets have adopted more skeptical views of integration (McLaren 2007; Kriesi et al. 2008). Fligstein sees a growing gap between the winners and losers of European integration: "Those who have not [benefited] do not see their fate as shared with people from around Europe. Instead, they still view the nation and their own state as the appropriate unit to be defended against external forces, whether they are political enemies or forces of neoliberal globalization" (Fligstein 2008: 124). Those most vulnerable to markets perceive that economic integration threatens their own position (see Brinegar/Jolly 2005; Ray 2004). As the countermovement – social protection against market forces – is not forthcoming at the EU level and is losing ground domestically, losers grow Euro-skeptical and endorse nationalism.[22] We argue that these developments are readily explicable from a Polanyian perspective.

The potential for conflicts among the member states has also increased. Many recent, highly politicized integration projects have brought into opposition national interests defending production and distribution cultures rather than the political left and right. This was true for the Takeover Directive as well as for the Services Directive. These represent two critical areas of market-enforcing integration still under construction,

22 That is how Berezin (2009) explains the rise of the new right in France and Italy.

namely, the European organization of the "fictitious" markets for capital and labor. In the case of the Takeover Directive, the dominant line of conflict ran between the coordinated variety of capitalism and its liberal-market counterpart; in the Services Directive case, Great Britain and the East European accession states squared off against the Continental and Scandinavian member states.[23] This political dynamic is not by coincidence, but a systematic effect. It is rooted in an intensification of economic integration, which no longer behaves neutrally toward the European varieties of capitalism and their differing levels of prosperity.

It could be argued that such neutrality has never existed in the course of economic and social integration, and that the interests of member states vis-à-vis integration have differed from the very beginning. Yet, the purpose and scope of integration have changed (Höpner/Schäfer 2010). Until well into the 1990s, the chief concern was the common market for goods. This increased competition among the European varieties of capitalism but left their institutions essentially untouched. Room was left for various strategies to achieve competitive advantage. The institutional underpinning differed significantly in each country and, in principle, this was allowed to remain so – from the liberal-market economic organization of Great Britain, to the organized *Modell Deutschland,* to France's statist model, all the way to the Scandinavian variety of capitalism. The integration of capital and labor markets that has now come to the fore causes asymmetrical adjustment burdens. Just as the attempted creation of a uniform European market for friendly and hostile takeovers means something different *institutionally* to France than it does to Great Britain, so too does the opening of service markets have other implications for high-wage economies like Germany than it does for the East European accession countries. In both cases, the actors define their interests first and foremost as country-specific rather than ideologically. From the politicization of such constellations, as authors such as Bartolini have pointed out, evolves a community of politicization, but not a common political space or a collective identity (Bartolini 2006: 47).

The evaluation of the current state of European integration reveals a dilemma: only those EU initiatives that cause conflict have politicization potential. They cross the threshold of public attention and spark public debates, even protests. Yet the politicization they cause does not necessarily lead to a greater sensibility for the arguments of the

23 This can be demonstrated particularly clearly from roll-call votes taken in the European Parliament. With the help of regression techniques, it can be analyzed whether the parties or the nationalities of the elected representatives were the stronger predictors of voting behavior. On this point, see, for example, Callaghan/Höpner (2005); Ringe (2005). The "clash of capitalisms" constellation was more obvious in the case of the Takeover Directive than in that of the Services Directive, although it was also clearly evident in the latter. Vehement protest was loudly expressed against the original Commission proposal from January 2004, especially in the organized economies of Continental and Northern Europe. Although the compromise that was eventually achieved was based on an agreement between the conservative and the socialist parliamentary groups of the European Parliament, sections of the center-right groups from Great Britain, Spain, Poland, Hungary, and the Czech Republic supported a more far-reaching liberalization of the service markets.

opposing side; instead, it often breeds skepticism on the part of those who fear becoming the losers of further market integration. The result could be both a growing distance from Europe and the call for protectionism. We argue that such counterreactions, rather than recent ECJ case law, have "Polanyian" content.

References

Alber, Jens, 2006: The European Social Model and the United States. In: *European Union Politics* 7, 393–419.

Alter, Karen J., 2001: *Establishing the Supremacy of European Law*. Oxford: Oxford University Press.

Alter, Karen J./Sophie Meunier-Aitsahalia, 1994: Judicial Politics in the European Community: European Integration and the Pathbreaking Cassis de Dijon Decision. In: *Comparative Political Studies* 26, 535–561.

Amable, Bruno, 2003: *The Diversity of Modern Capitalism*. Oxford: Oxford University Press.

Anderson, Perry, 2009: *The New Old World*. London: Verso.

Bartolini, Stefano, 2006: Mass Politics in Brussels: How Benign Could It Be? In: *Zeitschrift für Staats- und Europawissenschaften* 4, 28–56.

Beckert, Jens, 2009: The Great Transformation of Embeddedness: Karl Polanyi and the New Economic Sociology. In: Chris Hann/Keith Hart (eds.), *Market and Society: The Great Transformation Today.* Cambridge: Cambridge University Press, 38–55.

Beramendi, Pablo, 2007: Inequality and the Territorial Fragmentation of Solidarity. In: *International Organization* 61, 783–820.

Berezin, Mabel, 2009: *Illiberal Politics in Neoliberal Times: Culture, Security and Populism in the New Europe*. Cambridge: Cambridge University Press.

Block, Fred L./Margaret R. Somers, 1984: Beyond the Economistic Fallacy: The Holistic Social Science of Karl Polanyi. In: Theda Skocpol (ed.), *Vision and Method in Historical Sociology.* Cambridge, MA: Cambridge University Press, 47–84.

Brennan, Geoffrey/James Buchanan, 1980: *The Power to Tax: Analytical Foundations of a Fiscal Constitution*. Cambridge: Cambridge University Press.

Brinegar, Adam P./Seth Jolly, 2005: Location, Location, Location: National Contextual Factors and Public Support for European Integration. In: *European Union Politics* 6, 155–180.

Brzezinska, Agata 2009: *Gender Equality in the Case Law of the European Court of Justice.* Institute for European Studies Working Paper 2/2009. Brussels: Institute for European Studies.

Buchanan, James M., 1995/1996: Federalism and Individual Sovereignty. In: *Cato Journal* 5, 259–268.

Callaghan, Helen/Martin Höpner, 2005: European Integration and the Clash of Capitalisms: Political Cleavages over Takeover Liberalization. In: *Comparative European Politics* 3, 307–332

Caporaso, James A./Sidney Tarrow, 2009: Polanyi in Brussels: Supranational Institutions and the Transnational Embedding of Markets. In: *International Organization* 63, 593–620.

Carruba, Clifford J./Lacey Murrah, 2005: Legal Integration and the Use of the Preliminary Ruling Process in the European Union. In: *International Organization* 59, 399–418.

Dale, Gareth, 2008: Karl Polanyi's "The Great Transformation": Perverse Effects, Protectionism and "Gemeinschaft." In: *Economy and Society* 37, 495–524.

Dammann, Jens C., 2003: The Future of Codetermination after Centros: Will German Corporate Law Move Closer to the U.S. Model? In: *Fordham Journal of Corporate and Financial Law* 8, 607–686.

Deakin, Simon, 2009: Reflexive Governance and European Corporate Law. In: *European Law Journal* 15, 224–245.

Eichenberg, Richard C./Russel J. Dalton, 2007: Post-Maastricht Blues: The Transformation of Citizen Support for Integration, 1973–2004. In: *Acta Politica* 42, 128–152.
Eising, Rainer, 2002: Policy Learning in Embedding Negotiations: Explaining EU Electricity Liberalization. In: *International Organization* 56, 85–120.
Eklund, Ronnie, 2008: A Swedish Perspective on Laval. In: *Comparative Labor Law & Policy Journal* 29, 551–572.
Esping-Andersen, Gøsta, 1985: *Politics against Markets: The Social Democratic Road to Power*. Princeton: Princeton University Press.
——, 1990: *The Three Worlds of Welfare Capitalism*. Oxford: Polity Press.
Eurostat, 2008: Recent Migration Trends: Citizens of EU-27 Member States Become Ever More Mobile While EU Remains Attractive to Non-EU Citizens. In: *Eurostat: Statistics in Focus* 98/2008.
Falkner, Gerda, 1998: *EU Social Policy in the 1990s: Towards a Corporatist Policy Community*. London: Routledge.
Falkner, Gerda, et al., 2005: *Complying with Europe: EU Harmonization and Soft Law in the Member States*. Cambridge: Cambridge University Press.
Fligstein, Neil, 2008: *Euroclash: The EU, European Identity, and the Future of Europe*. Oxford: Oxford University Press.
Genschel, Philipp/Achim Kemmerling/Eric Seils, 2010: Accelerating Downhill: How the EU Shapes Corporate Tax Competition in the Single Market. In: *Journal of Common Market Studies* (forthcoming).
Goetschy, Janine, 1999: The European Employment Strategy: Genesis and Development. In: *European Journal of Industrial Relations* 5, 117–137.
Graetz, Michael J./Alvin C. Warren Jr., 2006: Income Tax Discrimination and the Political and Economic Integration of Europe. In: *Yale Law Journal* 115, 1186–1255.
Grossman, Emiliano, 2006: Europeanization as an Interactive Process: German Public Banks Meet EU State Aid Policy. In: *Journal of Common Market Studies* 44, 325–348.
Hall, Peter A./David Soskice, 2001: An Introduction to Varieties of Capitalism. In: Peter A. Hall/David Soskice (eds.), *Varieties of Capitalism: Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press, 1–68.
Hayek, Friedrich A., 1980 [1939]: The Economic Conditions of Interstate Federalism. In: Friedrich A. Hayek (ed.), *Individualism and Economic Order*. Chicago: University of Chicago Press, 255–272.
Heidenreich, Martin, 2009: The Open Method of Coordination: A Pathway to the Gradual Transformation of National Employment and Welfare Regimes? In: Martin Heidenreich/Jonathan Zeitlin (eds.), *Changing European Employment and Welfare Regimes: The Influence of the Open Method of Coordination on National Reforms*. London: Routledge, 10–36.
Hooghe, Liesbet/Gary Marks, 1999: The Making of a Polity: The Struggle over European Integration. In: Herbert Kitschelt et al. (eds.), *Continuity and Change in Contemporary Capitalism*. Cambridge: Cambridge University Press, 70–97.
——, 2008: A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus. In: *British Journal of Political Science* 39, 1–23.
Höpner, Martin/Armin Schäfer, 2010: A New Phase of European Integration: Organized Capitalisms in Post-Ricardian Europe. In: *West European Politics* 33, 344–368.
Joerges, Christian/Florian Rödl, 2009: Informal Politics, Formalised Law and the "Social Deficit" of European Integration: Reflections after the Judgments of the ECJ in Viking and Laval. In: *European Law Journal* 15, 1–19.
Kilpatrick, Claire, 2009: Laval's Regulatory Conundrum: Collective Standard-Setting and the Court's New Approach to Posted Workers In: *European Law Review* 34, 844–865.
Kriesi, Hanspeter, et al. (eds.), 2008: *West European Politics in the Age of Globalization*. Cambridge: Cambridge University Press.
Krippner, Greta, 2004: Polanyi Symposium: A Conversation on Embeddedness. In: *Socio-Economic Review* 2, 109–136.
Kröger, Sandra, 2009: The Open Method of Coordination: Underconceptualisation, Overdetermination, De-politicisation and Beyond. In: Sandra Kröger (ed.), What We Have Learnt: Advances,

Pitfalls and Remaining Questions in OMC research. *European Integration online Papers (EIoP)*, Special Issue 1, Vol. 13. Art. 5. <http://eiop.or.at/eiop/texte/2009-005a.htm>

Leibfried, Stephan/Paul Pierson, 1995: Semisovereign Welfare States: Social Policy in a Multitiered Europe. In: Stephan Leibfried/Paul Pierson (eds.), *European Social Policy: Between Fragmentation and Integration.* Washington, DC: The Brookings Institution, 43–77.

——, 2000: Social Policy: Left to Courts and Markets? In: Helen Wallace/William Wallace (eds.), *Policy-making in the European Union.* Oxford: Oxford University Press, 267–292.

MacLaren, Lauren M., 2007: Explaining Mass-Level Euroskepticism: Identity, Interests, and Institutional Distrust. In: *Acta Politica* 42, 233–251.

Maduro, Miguel Poiares, 1998: *We, the Court: The European Court of Justice and the European Economic Constitution. A Critical Reading of Article 30 of the EC Treaty.* Oxford: Hart Publishing.

Martinsen, Dorte Sindbjerg, 2009: Conflict and Conflict Management in the Cross-border Provision of Healthcare Services. In: *West European Politics* 32, 792–809.

Nölke, Andreas/Arjan Vliegenthart, 2009: Enlarging the Varieties of Capitalism. The Emergence of Dependent Market Economies in East Central Europe. In: *World Politics* 62, 670–702.

Obermaier, Andreas J., 2008: The National Judiciary-Sword of European Court of Justice Rulings: The Example of the Kohll/Decker Jurisprudence. In: *European Law Journal* 14, 735–752.

Piore, Michael, 2005: The Neoliberal Ideal and the Reality of Workplace Practice: Shifting Axes of Political Mobilization and New Regimes of Workplace Governance in the United States. In: Max Miller (ed.), *Worlds of Capitalism: Institutions, Governance and Economic Change in the Era of Globalization.* New York: Routledge, 173–192.

Pollack, Mark A., 1997: Delegation, Agency, and Agenda Setting in the European Community. In: *International Organization* 51, 99–134.

Ray, Leonard, 2004: Don't Rock the Boat: Expectations, Fears, and Opposition to EU-level Policy-Making. In: Gary Marks/Marco R. Steenbergen (eds.), *European Integration and Political Conflict.* Cambridge: Cambridge University Press, 51–61.

Ringe, Nils, 2005: Policy Preference Formation in Legislative Politics: Structures, Actors, and Focal Points. In: *American Journal of Political Science* 49, 731–745.

Rinken, Alfred/Oliver Kellmer, 2006: Kommunale Krankenhäuser als Instrumente sozialstaatlich-kommunaler Daseinsvorsorge im Europäischen Verfassungsverbund. In: *Die Verwaltung* 39, 1–28.

Rodden, Jonathan, 2003: Reviving Leviathan: Fiscal Federalism and the Growth of Government. In: *International Organization* 57, 695–729.

Ruggie, John Gerard, 1982: International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order. In: *International Organization* 36, 379–415.

Schäfer, Armin, 2006: A New Form of Governance? Comparing the Open Method of Co-ordination to Multilateral Surveillance by the IMF and the OECD. In: *Journal of European Public Policy* 13, 70–88.

Schäfer, Armin/Simone Leiber, 2009: The Double Voluntarism in EU Social Dialogue and Employment Policy. In: Sandra Kröger (ed.), What We Have Learnt: Advances, Pitfalls and Remaining Questions in OMC research. *European Integration online Papers (EIoP)*, Special Issue 1, Vol. 13, Art. 9. <http://eiop.or.at/eiop/texte/2009-009a.htm>

Scharpf, Fritz W., 1994: Community and Autonomy: Multilevel Policy-making in the European Union. In: *Journal of European Public Policy* 1, 219–242.

——, 1999: *Governing in Europe: Effective and Democratic?* New York: Oxford University Press.

——, 2006: The Joint-Decision Trap Revisited. In: *Journal of Common Market Studies* 44, 845–864.

——, 2008: Individualrechte gegen nationale Solidarität. In: Martin Höpner/Armin Schäfer (eds.), *Die Politische Ökonomie der europäischen Integration.* Frankfurt a.M.: Campus, 89–99.

——, 2009: *The Double Asymmetry of European Integration. Or: Why the EU Cannot Be a Social Market Economy.* MPIfG Working Paper 09/12. Cologne: Max Planck Institute for the Study of Societies.

Schimmelfennig, Frank, 2001: The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union. In: *International Organization* 55, 47–80.

Sick, Sebastian, 2010: *Mitbestimmungsrelevante Unternehmen mit ausländischen/kombiniert ausländischen Rechtsformen.* Düsseldorf: Hans Böckler Stiftung. <www.boeckler.de/pdf/mbf_2010_01_20_sick.pdf>

Siems, Mathias, 2002: Convergence, Competition, Centros and Conflicts of Law: European Corporate Law in the 21st Century In: *European Law Review* 27, 47–59.

Steeg, Marianne van de/Thomas Risse, 2007: *The Emergence of a European Community of Communication: Insights from Empirical Research on the Europeanization of Public Spheres.* Unpublished manuscript.

Stone Sweet, Alec/Thomas L. Brunell, 1998: Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community. In: *American Political Science Review* 92, 63–81.

Stone Sweet, Alec/James A. Caporaso, 1998: From Free Trade to Supranational Polity: The European Court and Integration. In: Wayne Sandholtz/Alec Stone Sweet (eds.), *European Integration and Supranational Governance.* Oxford: Oxford University Press, 92–134.

Streeck, Wolfgang, 1995: From Market Making to State Building? Reflections on the Political Economy of European Social Policy. In: Stephan Leibfried/Paul Pierson (eds.), *European Social Policy: Between Fragmentation and Integration.* Washington, DC: The Brookings Institution, 389–431.

Thatcher, Mark, 2007: Reforming National Regulatory Institutions: The EU and Cross-national Variety in European Network Industries. In: Bob Hancké/Martin Rhodes/Mark Thatcher (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy.* Oxford: Oxford University Press, 147–172.

Tholoniat, Luc, 2010: The Career of the Open Method of Coordination: Lessons from a 'Soft' EU Instrument. In: *West European Politics* 33, 93–117.

Thum, Kai, 2007: Vereinbarkeit der Gebührenfinanzierung des öffentlich-rechtlichen Rundfunks mit EG-Beihilferecht. In: *Neue Zeitschrift für Verwaltungsrecht* 2007, 521–527.

Van Apeldoorn, Bastiaan, 2009: The Contradictions of 'Embedded Neoliberalism' and Europe's Multi-level Legitimacy Crisis: The European Project and Its Limits. In: Bastiaan van Apeldoorn/Jan Drahokoupil/Laura Horn (eds.), *Contradictions and Limits of Neoliberal European Governance: From Lisbon to Lisbon.* Houndmills: Palgrave, 21–43.

Weingast, Barry, 1995: The Economic Role of Political Institutions: Market-preserving Federalism and Economic Development. In: *Journal of Law, Economics, and Organization* 11, 1–31.

Zeitlin, Jonathan, 2005: The Open Method of Co-ordination in Action: Theoretical Promise, Empirical Realities, Reform Strategy. In: Johnathan Zeitlin/Philippe Pochet/Lars Magnussen (eds.), *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies.* Brussels: PIEPeter Lang, 447–503.

——, 2008: The Open Method of Co-ordination and the Governance of the Lisbon Strategy. In: *Journal of Common Market Studies* 46, 436–446.

Zuleeg, Manfred, 1999: Gender Equality and Affirmative Action Under the Law of the European Union. In: *Columbia Journal of European Law* 5, 319–328.

Recent Titles in the Publication Series of the MPIfG

MPIfG Discussion Papers

DP 10/7
R. Karadag
Neoliberal Restructuring in Turkey: From State to Oligarchic Capitalism

DP 10/6
L. Dobusch, S. Quack
Urheberrecht zwischen Kreativität und Verwertung: Transnationale Mobilisierung und private Regulierung

DP 10/5
W. Streeck, D. Mertens
Politik im Defizit: Austerität als fiskalpolitisches Regime

DP 10/4
J. Beckert
The Transcending Power of Goods: Imaginative Value in the Economy

DP 10/3
M. Höpner, T. Müllenborn
Mitbestimmung im Unternehmensvergleich: Ein Konzept zur Messung des Einflusspotenzials der Arbeitnehmervertreter im mitbestimmten Aufsichtsrat

DP 10/2
G. Möllering
Collective Market-Making Efforts at an Engineering Conference

DP 10/1
T. ten Brink
Strukturmerkmale des chinesischen Kapitalismus

MPIfG Working Papers

WP 10/6
S. Neckel
Refeudalisierung der Ökonomie: Zum Strukturwandel kapitalistischer Wirtschaft

WP 10/5
R. Mayntz
Legitimacy and Compliance in Transnational Governance

WP 10/4
S. Kirchner
Organizational Identities and Institutions: Dynamics of the Organizational Core as a Question of Path Dependence

WP 10/3
W. Streeck, D. Mertens
An Index of Fiscal Democracy

WP 10/2
M. Höpner
Warum betreibt der Europäische Gerichtshof Rechtsfortbildung? Die Politisierungshypothese

WP 10/1
J. Beckert, W. Streeck (Hg.)
Die deutschen Sozialwissenschaften und die Gründung des Max-Planck-Instituts für Gesellschaftsforschung: Ariane Leendertz, Reimar Lüst und Franz-Xaver Kaufmann über die Signaturen einer Umbruchzeit

MPIfG Books

P. Aspers
Orderly Fashion: A Sociology of Markets
Princeton University Press, 2010

M.-L. Djelic, S. Quack (eds.)
Transnational Communities: Shaping Global Economic Governance
Cambridge University Press, 2010

B. Apitzsch
Flexible Beschäftigung, neue Abhängigkeiten: Projektarbeitsmärkte und ihre Auswirkungen auf Lebensverläufe
Campus, 2010

F. W. Scharpf
Community and Autonomy: Institutions, Policies and Legitimacy in Multilevel Europe
Campus, 2010

J. Beckert, C. Deutschmann (Hg.)
Wirtschaftssoziologie
VS-Verlag, 2009

S. Freye
Führungswechsel: Die Wirtschaftselite und das Ende der Deutschland AG
Campus, 2009

C. Crouch, H. Voelzkow
Innovation in Local Economies: Germany in Comparative Context
Oxford University Press, 2009

Ordering Information

MPIfG Discussion Papers
Order printed copies from the MPIfG (you will be billed) or download PDF files from the MPIfG website (free).

MPIfG Working Papers
Order printed copies from the MPIfG (you will be billed) or download PDF files from the MPIfG website (free).

MPIfG Books
At bookstores; abstracts on the MPIfG website.

www.mpifg.de
Go to *Publications*.

New Titles

Consult our website for the most complete and up-to-date information about MPIfG publications and publications by MPIfG researchers. To sign up for newsletters and mailings, please go to *Service* on the MPIfG website. Upon request to info@mpifg.de, we will be happy to send you our Recent Publications brochure.

ERPA

MPIfG Discussion Papers and MPIfG Working Papers in the field of European integration research are included in the *European Research Papers Archive (ERPA),* which offers full-text search options: http://eiop.or.at/erpa.