

I. Articles

WHAT DOES SOLIDARITY MEAN IN MULTI-NATIONAL CONTEXTS? THE CASE OF THE EUROPEAN UNION*

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Abstract

This paper aims to respond to the following questions: “what does solidarity mean in the language of EU law?” and what is the relationship between solidarity and diversity in EU law?” In order to respond to these questions I used the comparative argument, trying to compare the EU with Canada and Switzerland. Kymlicka and Banting (2004), among others, have analysed the tension between redistribution and heterogeneity in multicultural contexts in order to understand whether multicultural policies (MCs) exacerbate any underlying tension between diversity and social solidarity, further weakening the support for redistribution. My argument is that there is no trade-off between welfare policies (Ws) and MCs, rather, that it is possible to detect a kind of tension between them which generates asymmetry.

Keywords: *solidarity, European Union, Canada, Switzerland, diversity*

Résumé

Cet article se propose de répondre aux questions suivantes: “qu’est-ce qu’il signifie la solidarité dans le langage du droit de l’Union Européenne?” et quelle est la relation entre solidarité et diversité dans le droit de l’UE? Afin de répondre à ces

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questions, l'auteur utilise l'argument comparatif, en essayant de comparer l'Union Européenne avec Canada et la Suisse. Kymlicka et Banting (2004), entre autres, ont analysé la tension entre la redistribution et la hétérogénéité dans des contextes multiculturels, au but de comprendre si les politiques multiculturelles (MC) amplifient les tensions entre diversité et solidarité sociale, en affaiblissant, en même temps, le support à la redistribution. L'argument de l'auteur est qu'il n'y a pas de compromis entre les politiques de bien-être (Ws) et les MCs, mais qu'il est possible de déceler une sorte de tension entre eux, qui pourrait générer une asymétrie.

Mots-clés: *solidarité, Union Européenne, Canada, Suisse, diversité*

Introduction

This work originates from a sort of terminological paradox present in the latest developments in European law (*largo sensu* understood): when describing the recent amendment to Article 136 TFEU¹ in response to the EU economic crisis, in an excellent article published in V. Borger² argued that this provision “embodies both the change in normative solidarity and the transition from negative to positive solidarity”. The paradox is- when looking at some of the initiatives taken by the EU to challenge the crisis-

¹ “1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific to those Member States whose currency is the euro:

(a) to strengthen the coordination and surveillance of their budgetary discipline;
(b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).

3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.”

² Versteet Borger,, *How the Debt Crisis Exposes the Development of Solidarity in the Euro Area*, in (2013) 9 *European Constitutional Law Review*, pp. 7-36.

that neither Article 136 nor the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) use the word solidarity in their texts. A partial exception to this trend is represented by the Preamble of the ESM Treaty.³

From this overview it seems that solidarity has become a sort of f-word. Starting from this consideration this paper aims to respond to the following questions: “what does solidarity mean in the language of EU law?” and what is the relationship between solidarity and diversity in EU law?” In order to respond to these questions I used the comparative argument, trying to compare the EU with Canada and Switzerland. W. Kymlicka and K. Banting,⁴ among others, have analysed the tension between redistribution and heterogeneity in multicultural contexts in order to understand whether multicultural policies (MCs) exacerbate any underlying tension between diversity and social solidarity, further weakening the support for redistribution.

My argument is that there is no *trade-off* between welfare policies (Ws) and MCs, rather, it is possible to detect a kind of tension between them which generates asymmetry.

In order to develop my argument, I shall analyze the connection between “meta-national” social policies and the cultural implications of legal integration by focusing on the EU and then comparing it with the Canadian and Swiss cases.

Indeed Canada, the EU and Switzerland are characterized by the coexistence of different cultures, languages and welfare models within their own boundaries.

In their works on welfare policies, G. Esping-Andersen⁵ and M. Ferrera⁶ have distinguished at least three or four worlds of welfare coexisting in

³ “This Treaty and the TSCG are complementary in fostering fiscal responsibility and solidarity within the economic and monetary union.”

⁴ Keith Banting, Will Kymlicka, *Do Multiculturalism Policies Erode the Welfare State?*, in P. van Parijs, (ed.), *Cultural Diversity versus Economic Solidarity* (Brussels: Deboeck Université Press, 2004), pp. 227-284.

⁵ Gøsta Esping-Andersen, 1950, *The Three Worlds of Welfare Capitalism* (Princeton: Princeton University Press, 1990).

⁶ Maurizio Ferrera, *Le trappole del welfare* (Bologna: Il Mulino, 1998).

Europe. This is one of the reasons for the difficulty of harmonization in the field of social policies, and partly explains why the EU has resorted to soft law instruments and to the Open Method of Coordination (with questionable results in the majority of the cases). A similar variety can be found in Canada⁷ and in Switzerland.⁸

In these contexts the coexistence of different worlds of welfare can be explained keeping in mind the identity implications of welfare policies as confirmed by Canadian scholarship⁹ which clearly show that social policies are perceived as a distinctive element of the local identity and culture.

1. Solidarity in Multi-national Contexts: A Framework of Analysis

Many scholars (e.g., from a legal perspective, P. Carrozza)¹⁰ have already stressed the importance of welfare policies from a nation-building (and political identity-building) perspective, but always assume the state-condition as the reference field of research. Traditionally, in fact, the redistribution policies are founded on a common sense of belonging, a spirit of solidarity in a homogeneous community: a confirmation of this could be found in the history of state-building according to S. Rokkan's theory.¹¹ According to this author the development of the welfare state – in a context of growing social citizenship rights for the culturally homogeneous national communities – is aimed at providing a substantive complement to political democracy.

As scholars have pointed out:

Theories about solidarity have traditionally been developed in view of the nation state. The nation is considered a *Gemeinschaft* (community). The

⁷ Paul Bernard, Sebastien Saint-Arnaud, 2004, *More of the Same? The Position of the Four Largest Canadian Provinces in the World of Welfare Regimes*, at http://www.cprn.org/documents/32764_en.pdf.

⁸ Klaus Armingeon, Fabio Bertozzi, Giuliano Bonoli, *Swiss Worlds of Welfare*, in (2004) 27 *West European Politics*, pp. 20-44.

⁹ Daniel Béland, Andre Lecours, *Sub-State Nationalism and the Welfare State: Québec and Canadian Federalism*, in (2006) 12 *Nations and Nationalism*, pp. 77-96.

¹⁰ Paolo Carrozza, *Nazione*, in (1994) 10 *Digesto delle discipline pubblicistiche*, IV, UTET, Turin.

¹¹ Stein Rokkan, *State Formation, Nation Building, and Mass Politics in Europe* (Oxford: Oxford University Press, 1999).

members of the community are united by a *lien social* (social bond). This social bond, grounded in a common language and a common cultural heritage of a people, is seen as the basis for social solidarity. From a legal point, the community or *Solidargemeinschaft* is often regarded as something prior to law. Conceptually, a nation is considered to be an entity that exists independently of the state and its legal regulations. It is thus the idea of the nation that provides the conceptual framework for the development of legal concepts of solidarity embodied in particular welfare regulations, social rights and institutions at the level of a Member State...In the context of European law, the discussion about solidarity seems to draw on the very same conceptual foundations. Accordingly, solidarity is considered a common value which unites Member States and the people of the Member States. But can the concept of solidarity be simply transferred from the nation state to the European Union?...The European Union is, above all, a community of law, a *Rechtsgemeinschaft*. It is not a community united by solidarity in the traditional sense but, primarily, a community united by law. The discussion of solidarity in the European Union may therefore not simply revert to the theoretical foundations of national solidarity but has to reinvestigate the question about the philosophical foundations of social solidarity. Does social welfare rely on a community in the traditional sense or are there other possible explanations for solidarity and mutual assistance? Is solidarity a legal concept or is it a moral concept? Does it emanate from self-interest or from altruism? Is it based on reason or on emotion?¹²

When looking at those lines, one could question the very existence of solidarity in a context, like the EU or other pluri-cultural contexts, not characterised by the same features present in the nation state arena and wonder if there is a sort of trade-off between multiculturalism policies and solidarity policies. More recently, scholars like W. Kymlicka, K. Banting and A. Alesina have analysed the tension between redistribution and heterogeneity in multicultural contexts in order to understand whether multiculturalism policies - which recognise or accommodate ethnic groups - tend to exacerbate any underlying tension between diversity and social solidarity, further weakening the support for redistribution. This point has been analysed in multicultural contexts such as that of Canada by K. Banting and W. Kymlicka. In their study they demonstrate the non-exclusive relationship between solidarity and cultural homogeneity. Those who support the opposite vision identify three kinds of trade-off effects between multiculturalism policies (MCPs) and welfare policies (WPs):

¹² Julianne Ottmann, *Solidarity in National and European Law*, in (2008) 2 *www.icl-journal.com*, pp. 36-48, p. 37.