

# **THE SERVICE DIRECTIVE AND THE EU'S SOCIAL QUESTION**

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## 0 ABSTRACT

The rejection of the service directive's country of origin principle represented far more than watering down of the principle of mutual recognition (KLAJSND07). The institutional costs of a service economy differ to those of a product based economy because the value of the transaction is not transferable. This requires greater trust on the behalf of the consumer and this is in part supplied through the provision of the regulatory standards associated with a service economy. The regulatory needs of a service economy are therefore intended to regulate the relationship between a producer and consumer and are very different to those regulating the wage labour relationship of a mass production economy. In the latter trust could be provided through bureaucratic institutions that regulated transactions through formal hierarchies. In the former the market is coordinated through symbols and standards that are designed to protect the interests of the merchant rather than the worker. This explains the breadth of opposition to the service directive and demonstrates that the focus on EU institutions in itself can only tell a very partial part of the story of European integration.

The paper proceeds by first introducing the scope of the problem of the service and explaining why the term Europeanization fails to explain the conflict that the directive engendered as effectively as regulation theory (RT) can. Specifically RT demonstrates the significance of a shift from focusing on wage labour relation of a mass production economy to the consumer supplier relation of a service economy. In doing so the modern Fordist project of the single market is forced into conflicts with social institutions that played a key role in domestic social compromises of the C20th. This explains why the scope of opposition was so great and why the challenge of a service market is so difficult to stimulate from the supranational level.

## 1 INTRODUCTION

The Service Directive was in many ways the most obvious of proposals for further European integration. As one of the four freedoms that underpinned European economic integration (Art.s 47(2) EC & 55 EC ) it has received dramatically less attention than its sibling freedoms of goods, capital and labour. Services were obvious candidates for spill over not least because...

“Services are much more prone to Internal Market barriers than goods and are harder hit. Because of the complex and intangible nature of services and the importance of the know-how and the qualifications of the service provider, the provision of services is often subject to much more complex rules covering the entire service activity than is the case for goods.”<sup>1</sup>

Secondly with the affirmed intention of the Lisbon European Council to create a European “New Economy” the collective future of the citizens of the Union became dependent on high value added productivity in predominantly services. As the OECD put it...

“The services sector is by far the largest sector of economic activity in the Euro area. In 2003 it accounted for 58% of business sector value added, 68% of total employment and two-thirds of total output.”<sup>2</sup>

An influential survey by the Netherland’s CPB quantified the effect of a single market in services suggesting that it would lead to increased investment in commercial service “in the range of 30% to 60%, and the stock of foreign direct investment could [sic] increase by 20% to 35%.”<sup>3</sup> The directive therefore lies at the heart of the Lisbon

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1 See page 6 of Commission 2002 “Report from the Commission to the Council and the European Parliament on the State of the Internal Market for Services presented under the First Stage of the Internal Market Strategy for Services” COM(2002) 441 final, Brussels, 30.07.2002

<sup>2</sup> See page 1 Line Vogt 2005 “The EU’s Single Market: At Your Service?” *OECD Economics Department Working Papers #449* Paris Cedex 16, France.

<sup>3</sup> See page 1 CPB (Netherlands Bureau for Economic Policy Analysis) 2005 “A quantitative assessment of the EU proposals for the Internal Market for Services” [downloaded 06/09/2007 from <http://www.cpb.nl/eng/pub/cpbreeksen/notitie/23sep2004/>]

agenda's goals of achieving competitiveness and sustainability<sup>4</sup>. The Lisbon European Council made specific mention of services and the ECOFIN Council identified that structural reform would be secured through:

“an effectively functioning Internal Market in services by the removal of barriers to cross-border trade and market entry”.<sup>5</sup>

In addition to these more technocratic objectives, the service directive was also intended to bring the EU closer to its citizens, presenting practical solutions to everyday life.<sup>6</sup> So important is the service directive to the legitimation of the EU that Arlene McCarthy, chair of the EP's Internal Market Committee said:

"The litmus test for better regulation - efficient and effective laws - will be the services directive. If businesses don't find it easy to set up operations in another European country without red tape, we will have failed."<sup>7</sup>

These three claims – legal, economic and democratic – also demonstrated the centrality of the Service Directive to the EU's legitimacy as a political system. As well as providing economic prosperity it would also demonstrate the relevance of the EU to the everyday lives of its citizens. The Service Directive became a key part of the EU's broader modernisation strategy outlined in the Lisbon agenda.

Yet this offer has not been well received. It was a very popular reason for rejecting the EU constitution in France, a founder and traditionally most pro European of member states<sup>8</sup>. And it was not just the French who opposed Internal Market Commissioner Frits Bolkestein's Directive as throughout the proposal stage of the

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<sup>4</sup> Commission documentation and Eur CI reference

<sup>5</sup> Council “Broad Guidelines of the Economic Policy of the Member States and the Community, also secure concerning the Broad Guidelines of the Economic Policy of the Member States and the Community” Recommendation # 10093/02 of 21 June 2002t

<sup>6</sup> Throughout the development of the proposal there are FAQs using case studies to demonstrate how a service directive would improve the day to day life of service sector businesses. See for example European Parliament Committee On The Internal Market And Consumer Protection Notice to members 2004 “Background documentation on the Services Directive: Practical Examples of how the Services Directive will Make a Difference: The Situation Before and After” PE 349.933, N° 6/2004

<sup>7</sup> EP Press Release “New Services law must deliver for business and consumers says the Chair of the Internal Market Committee”, Mrs Arlene McCarthy 4 April 2006

<sup>8</sup> See Charles Bremner “Chirac has subdued Bolkestein's monster - but he's not safe yet” *The Times* March 24, 2005 [downloaded 06/09/2007 from <http://www.timesonline.co.uk/article/0,,13509-1538929,00.html>]

directive opposition was broad<sup>9</sup>. Various member states opposed the proposal and even now in its much debated form, and with the approval of the EP, member states remain reticent to liberalise this sector<sup>10</sup>.

To explain the broad opposition to the long established principle of European market integration this paper explores the national level social compromises that it challenged. The paper argues that the stated aim of the service directive – to achieve a European level single market in services – threatened a core compromise that underpinned many of Europe’s service economies. To understand both the importance of the compromise that was challenged by the service directive and the reason that this was missed by the service directive we need to understand the relationship between the forms of capital accumulation that have driven the process of European integration and the institutional forms that have maintained social stability in its society across the various levels of activity.

The paper begins by outlining how regulation theory links the policy making engages with the relationship between economic stability

## **2 REGULATION THEORY AND THE EU**

Regulation theory brings four main resources to our understanding of the service directive. As the approach that most effectively explained the significance of mass production technologies in industrialised societies through the concept of Fordism, it has a well developed conceptual apparatus for exploring whether a service sector economy is both viable and sustainable. Unlike other approaches that share a Gramscian heritage, regulation theory is able to explore the evolution of stable periods of capitalist accumulation. It does this by relating the ways that social institutions regulate behaviour to the overarching and dominant forms of capital accumulation. In this way a variety of modes of social regulation are given priority

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<sup>9</sup> Although the Directive would take on Bolkestein’s name, not least because it sounds like “Frankenstein”, the directive was of course the collective responsibility of the College of Commissioners including Pascal Lamy, a point not missed by those keen to point out Chirac’s link during the vote on the EU Constitution.

<sup>10</sup> The most recent Commission review of the Lisbon agenda identified ...“... competition in services, where there are currently severe regulatory obstacles” to be a weakness in one of the member states. See Commission 2006 “The Commission's Assessments of National Reform Programmes for Growth and Jobs: Austria” [[http://ec.europa.eu/growthandjobs/pdf/2006\\_annual\\_report\\_austria\\_en.pdf](http://ec.europa.eu/growthandjobs/pdf/2006_annual_report_austria_en.pdf) on 06/09/2007]

according to their contribution to the key economic relation of that period, rather than according solely to their historical presence or some identification with an elite group.

There are two main contributions that RT can make to (especially institutionalist) public policy approaches to the EU. The first is that rather than distinguishing itself from methodological individualism by asserting the role of rules and norms and the other paraphernalia of the new institutionalism in political science, this approach does so through reference to the regime of accumulation. This is a key concept in regulation theory and refers to the main economic process that describes a sustained period of economic growth. Fordism described, for example, a stable regime of accumulation based on a system of mass production technology and popular consumption that explains the USA's privileged position during the C20th. Regimes of accumulation are not all the same and the characterisation of the regime is a central challenge presented by regulation theory. They have, for example, been presented as competitive and expansive, as under the free trade and UK led period of 19<sup>th</sup> capitalism, and monopolistic and intensive, as in the relatively closely coordinated period of US led growth in the C20th.

While there is still debate over the “whats” and “whethers” of a successor to Fordism the ability to define and demonstrate empirically the importance of a core set of relations has generated powerful hypotheses for social change. Aglietta's financialisation regime of accumulation has explained the shift in terms of the extension of credit and financial market imperatives and the growth of audit and “share holder value”<sup>11</sup>. Petit has demonstrated how a service sector led regime of accumulation leads to slow economic growth<sup>12</sup>. Others have explored the shifting role of the state from Keynesian National Welfare States to Schumpeterian Post national Workfare states or focused on a particular relation, such as in work or gender<sup>13</sup>. The emphasis on evolutionary explanations for institutional change

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<sup>11</sup> Aglietta, M. (1998) Capitalism at the turn of the century: regulation theory and the challenge of social change, *New Left Review*, 232: 41–90; Aglietta, M. and Breton, R. (2001) Financial systems, corporate control and capital accumulation, *Economy and Society*, 30(4): 433–466. Karel Williams, 2000 “From shareholder value to present-day capitalism” *Economy & Society*.29, 1pp. 1-12.

<sup>12</sup> P.Petit 1986 *Slow Growth and the Service Economy* London: Pinter

<sup>13</sup> See H.Gottfried 2000 “Compromising positions: emergent neo-Fordisms and embedded gender contracts”. *British Journal Of Sociology*. 51, 2pp.235-259; B.Jessop 1995 Towards a Schumpeterian workfare regime in Britain? Reflections on regulation, governance, and welfare state” *Environment*

acknowledges that some modes of social regulation may persist long after the relevant regime of accumulation has ceased to prevail.

The second contribution that RT can offer to public policy debates is that it enables comparative analysis by linking socially embedded institutional analysis to macro economic change. The method of comparing modes of social regulation frequently draws on an evolutionary (or historical) institutionalist methodology. This locates it more closely to Poulantzas' structuralist interpretation of the state than Miliband's instrumentalism. For RT the challenge is not to impose order on the actions of individual groups through their relationship with past decisions, as historical institutionalist accounts in political science tend to assume. Rather RT assumes a degree of contingency in all actions and so attempts at most to identify the strategic context in which actors behave<sup>14</sup>. This means that comparisons are not explained through the actions of individuals groups and interests but rather through an exploration of how the contexts which inform and constrain individual action are linked. This enables comparison across a greater number of variables than specific policy area, political system or national capitalism, although all of these are possible. Because the scope of analysis is not policy elites or legal regulations it can, and recently has, explored other mechanisms of social reproduction, such as cultural tropes and symbolic values<sup>15</sup>. While national modes of social regulation have been explored in depth by regulation theorists<sup>16</sup>, there is no inherent commitment to the national level as supra- and sub- national levels of social regulation are also key in sustaining stable periods of accumulation<sup>17</sup>. There is no necessity to assert methodological primacy on one level or form of social regulation over another.

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*And Planning A* 27, 10 pp.1613-1626; J.Peck & M.Jones 1995 "Training and Enterprise Councils: Schumpeterian workfare state, or what?" *Environment and planning A* 27, 9, pp.1361-1396; J.Peck & N.Theodore 2001 "Exporting workfare/importing welfare-to-work: exploring the politics of Third Way policy transfer" *Political Geography* 20, 4, pp. 427-460, 2000 "Work first!: workfare and the regulation of contingent labour markets" *Cambridge Journal Of Economics* 24, 1, pp. 119-138.

<sup>14</sup> Bob Jessop 2001 "Institutional re(turns) and the strategic-relational approach" *Environment And Planning A* 33, 7, pp.1213-1236.

<sup>15</sup> Bob Jessop 2004 "Critical semiotic analysis and cultural political economy" *Critical Discourse Studies* 1, 2, pp.159-174; J-C.Graz 2006 "Hybrids and Regulation in the Global Political Economy" *Competition and Change* 10, 2, pp.230-245

<sup>16</sup> See R.Boyer & D.Drache 1996 *States against markets: the limits of globalization* London: Routledge. J. Hollingsworth, J. Rogers & R.Boyer 1997 *Contemporary capitalism: the embeddedness of institutions* Cambridge: Cambridge University Press

<sup>17</sup> C.Dannreuther 2006 "Regulation Theory and the EU" *Competition and Change* 10, 2, pp. 180-199

These contributions are especially useful if we are to explore policy making in the EU. Traditional approaches to European integration that focused on national versus supranational agency in the process of European integration were less useful in explaining the intricacies of interdependence between the various levels of policy making. The comparative politics approaches that have emerged since Hix's challenge have generated more useful and detailed explanations for how policy outcomes have emerged but have been less successful in linking these to the overall dynamics of integration and the broader societal concerns faced by the subjects of the European project<sup>18</sup>. They have also tended to understate the importance of the forces driving change in the EU, sometimes reverting to rather dated assumptions of functionalism or state leadership. The multi level governance critique of state centrism (Marks Hooghe and Blank) demonstrated that policy actors did not just focus on the national or EU level but worked across the different levels. Yet this important insight also failed to explain how these actors were suddenly emancipated from domestic constraints at the same time. Majone's regulatory state model assumed that more information would enable behavioural change and so the improve the governance of the single market<sup>19</sup>, but it failed to explain why and how individual actors suddenly became all knowing. Hix' comparative politics approach demonstrates how the actors and institutions of the EU interact to make policy<sup>20</sup>. But it does not explain why the actors and institutions started to interact when they did.

### 3 THE LIMITS TO "EUROPEANISATION"

Regulation theory can therefore offer alternative explanations to the changing authority structures of the EU. The main approach in public policy for explaining this process is called "Europeanisation". This approach has close links with the new institutionalism in political science. Olsen who introduced institutionalism to political science in 1984 has made a number of contributions and Simon Bulmer, who first

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<sup>18</sup> S.Hix 1994 "Approaches to the study of the European Community: the challenge to comparative politics" *West European Politics* 17, 1, pp.1-30.

<sup>19</sup> G Majone, 1994 'The Rise of the Regulatory State in Europe'. *West European Politics* 17, 3, pp. 78-102; 1997 "The new European agencies: regulation by information" *Journal of European Public Policy*. 4, 2, pp.262-275, 1996 *Regulating Europe* London: Routledge

<sup>20</sup> S.Hix 1999 *The Political System of the European Union* London: Macmillan

introduced the new institutionalism to EU political science, continues to effectively explore the relationship of national political organisation and EU politics<sup>21</sup>.

Europeanisation has been helpful in demonstrating both the variability of national engagement with the EU and exploring the institutional characteristics that explain the variations in domestic Europeanisation.<sup>22</sup>

But it has been less useful in explaining the relationship between the forces driving change and the changes that have occurred. Featherstone acknowledges that in Europeanisation structure and agency are relational concepts but it is less clear how and why these relationships develop together or apart<sup>23</sup>. That is not to say that the literature on Europeanisation is closed. On the contrary it is very open thematically addressing Europeanisation historically, culturally, and in terms of both policy and institutional adaptation. It is also open methodologically, inviting a range of approaches to explore a phenomenon in a similar way that the term globalisation attracts a wide range of interests. Europeanisation approaches fail in their inability to provide the clarity that links the general characteristic of the phenomenon it seeks to explain with the case study that are being used to investigate it (other crit.s of Europeanisation here).

Regulation theory demonstrates the role of the European level in the maintenance of political bargains at the national level<sup>24</sup>. Unlike neo realist approaches which assume a separation of national and international, regulation theory describes structure through the regime of accumulation in order to demonstrate how social relations are determined by processes of capitalist accumulation. Thus the Twentieth century was characterised by the Fordist regime of accumulation through which social institutions linked the wage labour relation to the technologies of mass production and consumption. The EU's granting of economic rights across the various member states helped ensured market access for good produced that were surplus to national

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<sup>21</sup> March & Olsen 1984, Olsen 2002, Bulmer publ pol, Armstrong & Bulmer, Bulmer 1983, Bulmer 2004)

<sup>22</sup> (Rometsch and Wessels, Ladrech, Hix & Goetz)

<sup>23</sup> (Featherstone 2003: 4

<sup>24</sup> Dannreuther 2006 op cit

demand. European integration was therefore central to maintaining domestic compromises<sup>25</sup>.

#### 4 REGULATION THEORY AND THE POLITICAL ECONOMY OF SERVICES

The question that RT can help to answer is why services became such a profitable element of the European economy that they warranted additional regulatory provision. The core relationship of the Twentieth Century was built at the nation level around the wage labour nexus<sup>26</sup>. This relationship was formalised through national systems of institutionalised compromises in which the labour side of the nexus was represented by trade unions and the wage price was set by the employers. States played important roles in coordinating these negotiations through greater or lesser degrees of corporatist arrangements. They also coordinated macro economic arrangements by managing exchange rates and demand across the economy. These institutional arrangements are well known to any student of the variety of capitalisms literature and outlined in a variety of well known works<sup>27</sup>.

These agreements were the product of specific social conflicts and their resolution in compromises. Famous ones include those formed during the 1930s such as the Saltsjobaden agreement in which Swedish trade unions, big businesses and peasants agreed to the core institutions of the social democratic welfare state. Other well known European examples include Germany's regulated financial markets and France's planning system, the institutions of which were influenced by periods far preceding post war economic reconstruction<sup>28</sup>. These institutionalised agreements provided the relative stability in the social sphere that allowed mass production technologies to generate the sustained periods of economic growth that made Fordism an attractive investment for financial capital.

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<sup>25</sup> C.Dannreuther 2006 op cit

<sup>26</sup> C. Dannreuther & P.Petit 2006 "Post-Fordism, Beyond National Models: The Main Challenges for Regulation Theory" *Competition & Change*, 10, 2, pp. –113

<sup>27</sup> A.Shonfeld *Modern Capitalism*, Soskice *Varieties of Capitalism*, Galbraith *New Industrial State*

<sup>28</sup> P.Hall 1986 *Governing the Economy* Oxford: Polity Press; J.Zysman 1981 *States Markets and Growth* Ithaca: Cornell

Great social compromises do not just appear out of nowhere but reflected existing societal norms and beliefs<sup>29</sup>. Even after epochal moments, such as the end of the Second World War, the ghost of the past remained and retained certain characteristics of the pre war period. The tradition of French planning that informed the planning system dates back to Colbert, for example. Others, such as in Germany, were more contemporary with the bulk of the regulations that defined the Mittelstand sector legislated during the early 1930s<sup>30</sup>. The social compromises of each national economies varied and were clearly not determined by the mass production technologies that sustained their growth. It is also clear that they were not singular events, but evolved over periods of crisis and compromise. That the past constrains or influences the path of future decisions is a well worn idea in evolutionary social science<sup>31</sup>.

Central to each social compromise was the engagement of the social organisation of the economy with the dominant technology of the day to form a relatively stable and sustainable form of economic growth. Fordism did not just secure the means of production that large production lines required. It also linked production with consumption. Henry Ford's famous "one dollar day" generated mass markets for his standardised product. This helped to sustain the cycle of growth. While regulation theory has long recognised the importance of consumption, it has recently come to refocus on the role of demand in the regulation of capitalist accumulation. This matches a broader interest in the role of the state in sustaining and supporting cultures of consumption. States played an active role in the regulation of consumer interests, recognising consumers as legitimate groups and providing consumer protection since the late C19th. Consumption was recognised by all modern states in the twentieth century, reflecting the traditions of consumption and political representation of consumer groups<sup>32</sup>. Retail, and especially department stores, were central to the development of middle class identities and lives in the pre WWI period<sup>33</sup>.

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<sup>29</sup> K. Polanyi *The Great Transformation*

<sup>30</sup> See *Contemporary European History* special issue 1996

<sup>31</sup> (Veblen, Hodgson, Thelen & Steinmo)

<sup>32</sup> M. Hilton 2007 "Consumers and the State since the Second World War" *The Annals of the American Academy of Political and Social Science* 611, pp.66-81

<sup>33</sup> Crossick & Haupt op cit

Consumption and retail were therefore important in understanding the social compromises Fordist social relations would be built upon. Retail was an important social relation that preceded those formalised through the institutions that governed labour wage relations under Fordism. Local retailers were protected by local institutions such as Chambers and guilds, rather than national ones, such as employers associations and trade unions, which retained their authority from the feudal and monarchical regimes that characterised *ancient regime* economies. Retailers also performed moderate and very localised welfare functions through the extension of credit to local shoppers. They also enriched their cultural and social environments as places of gossip and social interaction. Some of these regulatory characteristics would inform and spill over into Fordist compromises.

Retail services therefore provided one part of the social base upon which Fordist social compromises would be built. Fordism would be driven by the twin processes of combination and mass production that linked modern society to its pre industrial life. But the form of chambers of Commerce and the guild systems that pervaded European capitalism predated the compromises that would be built upon them. These are relationships still celebrated through artisanal networks (such as guilds), cultural and religious ceremonies (such as in Sicily and Spain) and in the traditions of regulated retail capitalism in Belgium Netherlands in which shoes retailers maintain their price agreements. They reflect the national political economies in which they have evolved, predate the modern forms of social embedded institutions that typify studies in the varieties of capitalism literature and give an insight into the more culturally informed and less formally regulated worlds of economic exchange that are frequently ignored in the grand narrative histories of the Twentieth Century. The governance of the retail sector played a large part in the relationship between consumer and merchant or retailer. In Sweden consumer protection was advanced through the trade union and social democratic movements, for example. In the UK, the extension of mass transportation by the mid C19th contributed to the centralisation of the retail sector that in turn contributed to the rise of the cooperative movement<sup>34</sup>.

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<sup>34</sup> J.Jeffreys 1954 *Retail Trading in Britain 1850-1950. A study of trends in retailing with special reference to the development of Co-operative, multiple shop and department store methods of trading.* Cambridge University Press

These social compromises of consumption describe an important capitalist relation that is ignored in many debates of contemporary capitalism. It is an important but distinct relation to the one in which the employer is granted greater control over the employee by the prioritisation of property rights. It is also a useful distinction if we are to understand how the core societal relationship that underpins a Fordist economy, that regulates accumulation through the wage labour relation and a service economy that regulates accumulation through the consumer supplier relation. The key difference in the relationship is over the non transferability of a service. In Fordism labour value is added to the material value of the final product that is communicated through the price to the market. Quality can be defined through comparison in the market place. As it is the most expensive key factor of production social institutions evolve to regulate the cost of labour. In contrast, once a service has been provided it no longer has value for resale. The value of a service may be incorporated in a price but the quality of the service cannot be compared with equivalents in the market, as in the goods market, because the value of the service is not clear to see in the final product.

The transaction therefore becomes a personal one between the consumer and the supplier of the service. As the consumer will have to make a guarantee to pay the service provider before they provide the service, the relationship favours the service provider. After a long period of transactions the consumer will know that the quality is good and understand how the service adds value. But in a new or foreign market such as that envisaged by the service directive, there is no way that the consumer can be sure of the quality and this makes it very hard for the retailer to justify her price to the consumer. There is therefore a need for the regulation of quality or standards. As Commons observes:

“Now, there is a prime consideration in the craft- gild stage that enhances the power of the merchant to shift his costs to the consumer. This is the fact that his market is a personal one and the consumer gives his order before the goods are made. On the other hand, the bargaining power of the merchant is menaced by the incapacity of customers accurately to judge of the quality of goods as against their capacity clearly to distinguish prices. Therefore, it is enough for the purposes of a protective organization in the custom-order stage of the

industry to direct attention solely to the quality of the product rather than the price or the wage, and to seek only to exclude bad ware and the makers of bad ware.”<sup>35</sup>

Unlike products, whose price could be judged in comparison with other similar products in the market place, services required standards to establish and maintain the values that enabled transactions to take place. The regulation of the right to trade by guilds and chambers established the possibility of a market by providing basic standards that a customer could rely on to establish the value of a bespoke product or service. The regulation of a trade was therefore also established to guarantee the quality of a service and so ease the process of exchange between the supplier and consumer. The service economy therefore focuses above all on maintaining a high level of trust in the relationship between the consumer and the supplier of a good or service through guarantees of standards and quality.

The obligation for traders to provide particular conditions of employment to their workers or to comply with specific notions of social justice was not implicit in the bargain nor required for some time. In the period of pre industrial production that Commons describes, this exchange relationship treated labour as a service too regulating standards through stringent master apprenticeship relationships.

The regulatory obligations that Bolkestein sought to remove were not those secured by a burgeoning working class in employment rights. Rather the sanctioning of regulations in the service sector was more directed at securing the welfare of the merchant classes which prevailed in pre revolutionary eighteenth century Europe<sup>36</sup>. These people depended upon the credibility that standards provided their products for their livelihoods. The latter part of the C19th was the period during which many of key social institutions were reformed in response to the pressures of combination of industry and labour. These debates extended beyond the operation of contracts and to the role of the economy in society. They spilled into the role of work, the family, women the church and morality and engendered social movements that retain their

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<sup>35</sup> See 44, John R. Commons 1909 “American Shoemakers, 1648-1895: A Sketch of Industrial Evolution” *The Quarterly Journal of Economics*, 24, 1, pp. 39-84.

<sup>36</sup> See page 33, E.Hobsbawn 1962 *The Age of Revolution: 1789-1848* London: Abacus

significance in, for example, Christian Democratic traditions (Crossick & Haupt 1994). The politicisation of the middle classes and their relationship to industrialists and or the working class informed the great debates of the early half of the Twentieth century and its resolution confirmed the role of nation states in the international system. These were resolved nationally and indicated the first stumbling steps to the adoption of mass production technologies in industrialised societies. They were also fraught with problems and the fascist response contributed to one of the darkest periods of European history. The rejection of free market liberalism by the Far Right in the 1990s implies a dangerous realignment of protectionism and conservatism once expressed in the Poujahdist movement<sup>37</sup>. The relationship between the service economy and the state is far from problematic and potentially more sensitive to navigate than the regime of accumulation based on Fordist production techniques.

## **5 PRE- AND POST- FORDIST SOCIAL COMPOMRISE**

Semi public institutions that emerged from the “social question” debates of pre-Fordist period regulated exactly the kind of personalised exchange that characterises the service sector. These institutions were established before or as corporatist agreements grew through the process of combination of labour and capital and as the welfare institutions associated with modern Fordist states grew. We might even suggest that the current emphasis on a low trust service economy is the norm and the brief period of Fordist welfarism are the aberration. Where Fordism espoused collective solutions to universal problems, the pre and post Fordist eras have both relied on a laissez faire role for the state. They have also allowed market forces to determine the distribution of wealth in society and charitable behaviour to resolve market failures when they arose in areas such as education and unemployment. An important characteristic of the period of economic growth that followed Fordism has been the shift towards a more competitive and less monopolistic regime of accumulation. The vertical disintegration of larger companies, the growth in return on communication technology, the increase in access to a global division of labour and the prevalence of financial service market integration and differentiation have all

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<sup>37</sup> See pages 305-6 of Hans-Georg Betz 1999 “Contemporary Right-Wing Radicalism in Europe” *Contemporary European History*, 8, 2, pp. 299-316

contributed to a far greater role of services in the economy. Competition has also been introduced into public services. The extension of the right to trade to areas once controlled by public interests – also known as privatisation – has exposed sectors, propagated on public sector funding, to new dynamics of competition. Health, education and other services that underpinned social compromises have been exposed to global service corporations. This has presented different challenges to the modern corporation in the service sector. Scale and scope, central to the Chandler’s modern corporation, are still relevant to certain parts of the service sector such as banks although they work in an increasingly competitive and internalised market place<sup>38</sup>.

But the mechanism of control has also changed. No longer coordinated through the corporate hierarchy that characterised Fordism, service companies now face new coordination challenges under the market. As services they too need to demonstrate that they are providing a service worthy of the price that they are charging. This audit market has been an area of incredible growth in European capitalism<sup>39</sup>. Law companies, credit rating agencies, management consultants and auditors all provide a service that seeks to demonstrate the credibility of the service being provided<sup>40</sup>.

Fordism relied on organisational hierarchy to discipline individual behaviour and so calm the uncertainties of accumulation. Keynes and Knight both drew on the coordinating aspects of hierarchy in the management of uncertainty<sup>41</sup>. The service economy relies on coordination through the regulation of preferences. Uncertainties need to be governed through reflexive modernisation that requires the internalisation of risk within the individual<sup>42</sup>. While Fordism uses bureaucratic control to enable the extraction of surplus value from labour, a service economy uses control to enable the extraction of sales from consumers. Active labour market policies enable workers to transform themselves as economic actors so that what they offer will fit the demands of the market. The regulatory mechanisms far transcend those of laws and extend to various economies of signs and space<sup>43</sup>. The purpose of all of these is to sustain the credibility of the service being provided to the consumer and so justify the price

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<sup>38</sup> P.Nightingale 2000 “

<sup>39</sup> M.Power *The Audit Society*

<sup>40</sup> T.Sinclair ; L.Amoore 2002 *Economy and Society*

<sup>41</sup> Keynes ; Knight ; Daniel Ladrech ; Steve ??

<sup>42</sup> D.O’Malley ; Lash, Gddens & Beck *Reflexive Modernsiation*

<sup>43</sup> (Lash & Urry)

demanded. A wide range of services contribute to this process: marketing agencies maintain brand value through relational marketing, lawyers clarify the position of parties in an exchange to ensure that propositions are complied with, management consultancies and business advisers provide training and enable compliance with specific guidelines to provide assurance that services are ISO accredited. All of these tasks are in addition to the regulations provided by states. Trust is accredited as much through compliance and accreditation as it is through authority and hierarchy. In a service economy the hybrid nature of governance, as both public and private and at many levels is a direct consequence of the variable requirements of the disembedded consumer supplier relation<sup>44</sup>.

These new ways of supplying trust encroach on the traditional institutional mechanisms that pre dated the Fordist period. During the pre Fordist era, the small service sector firms employed the majority of workers in Europe, formed the majority of firms and so points of tax revenue, and played the greatest role in sustaining order in society. The institutions that they are embedded in are the product of the “social question” that, once resolved, was pivotal to the emergence of a modern European society as it enabled the establishment of a “middle” around which other compromises could be defined<sup>45</sup>. Its resolution described the terms upon which debates over welfare and workers rights would be defined, representative democracy assured, and international relations managed through the provision of military personnel to the protection of local markets.

When taken in this light the controversy surrounding the directive is of little surprise. It was not received as the extension of a long established trend of economic integration so much as a direct confrontation of the full set of rights that constituted citizenship in Europe’s oldest democracies and entrenched their political cultures. The popular debates over the social question addressed the full range of rights enjoyed by citizens in the Twenty First Century: civic rights, political rights, social rights, and economic rights. In so doing the EU for the first time directly confronted

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<sup>44</sup> Graz 2006 op cit

<sup>45</sup> See Crossick various but especially G.Crossick and H-G.Haupt 1994 *The Petite Bourgeoisie in Europe 1780-1914 – Enterprise, family and independence* London: Routledge

the issue of citizenship with its proposed citizens in a way meaningful to them<sup>46</sup>. What makes the service directive particularly interesting is how it revealed the Parliament's capacity to address the concerns that were raised in conjunction with Bolkestein's rather clumsily timed proposal and broker a proposal that would enable the achievement of a free market in services. In short the service directive demonstrates that despite its recent travails, the EP is in a strong position to undertake a much needed negotiation of the EU's own "social question".

## **6 THE LIMITS TO FORDIST SUPRANATIONALISM**

Fordist supranationalism describes the role of the supranational level in the national modes of social regulation that sustained mass production regimes (Dannreuther 2006). Three areas are worthy of specific mention. First the provision of property rights favoured large corporate entities. These were able to move products surplus to national requirements across the common market without fear of the expropriation of their profits by excessive tariffs. Labour did not receive the same rights to guarantee rates of pay or even the right to strike. The second aspect was that these were implemented and enforced mainly through the judiciary. Legal rights were extended through ECJ activism and interpolated into black letter law through national court jurisprudence. Non formal forms of coordination and understanding had little significance under Fordism. Finally supranational Fordism favoured one form of representation: organised and hierarchical. It had little scope for discussion with disorganised interests that could not effectively present themselves through pinnacle groups or national channels. These characteristics are especially evident in the production of the service directive proposal. Beneath we shall see how these characteristics of supranational Fordism (promoting the rights of corporations, drawing on legal authority, and a hierarchical consultation) also characterised the service directive. In doing so the limits to Fordist supranationalism were laid bare.

The service directive owes its origins to the founding Treaties (Articles 47(2) EC and 55) EC. Article 47 (2) EC provides for the right of establishment, specifically that the Council will use its discretion (251 EC) to ...

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<sup>46</sup> While the TEU provides citizenship there has been a general decline in electoral turnout ever since.

“... issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons”.

Article 55 then applies 47 to the chapter 3 on the freedom to provide services stating:

“restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.”

The freedom to establish (ie self employment) has therefore always been a pre-condition of freedom to serve and was enacted very early in EEC legislation. But it was not developed other than as an afterthought for the SME economy of the EU but in practical terms it was not taken developed<sup>47</sup>. Although the Single European Market was innovative in the use of “New Approach” framing directives, like the Bolkestein Directive, the removal of regulatory burdens relied mainly on soft law or tertiary legislation<sup>48</sup>, and was directed at public administration law through various non binding resolutions. Throughout the 1980s and much of the 1990s, administrative simplification meant little more than conducting a *fiche d’impact*<sup>49</sup> - a quantified assessment of costs – that would be used to inform policy making. Member states would sign Council Resolutions to promote the limitation of regulatory burdens,

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<sup>47</sup> The issue of regulatory barriers was first picked up in an ECOSOC report to the Commission in 1974, but was most broadly identified in the European Parliament’s European Year of the SME in 1982<sup>47</sup>. The attack on regulatory barriers focused primarily on industrial products in the Single Market Programme. But the Commission’s 1986 SME Action Programme introduced the idea of horizontal (as opposed to vertical) measures to the lexicon of supranational legislation and more specifically highlighted the need to improve the business environment by a process called “administrative simplification”. This idea was keenly adopted by the Commission in its drive to promote the Single Market and by various European Councils following New Right agendas.

<sup>48</sup> See R Baldwin 1995 *Rules And Government* Oxford New York: Clarendon Press Oxford University Press.

<sup>49</sup> These were inspired by the UK’s small business litmus test and designed to provide a separate assessment of the costs of legislation in relation to small firms rather than larger firms. The convergence of the 1986 SME Action Programme, the UK DTI 1988 “DTI – the Department for Enterprise” and 1985 “Burdens on Business White Paper” were not coincidental but reflective of a considered and pre Bruges speech response to the more socially responsible version of market promoted by Delors.

which could then be used by those lobbying the domestic political arena<sup>50</sup>, but soft law prevailed as the Council reinforced its commitment to the non duplication of national measures and the limited relevance of the EU in SME policy<sup>51</sup>. In effect this significant body of soft law was required to translate the legal basis of outdated Treaty articles into contemporary policy.

The Lisbon Declaration made specific reference to the need to accelerate the achievement of a free market in services if its ambitious goals concerning employment, sustainability and social cohesion were to be achieved<sup>52</sup>. To this end Prodi's Dutch Commissioner for the Internal Market Frits Bolkestein communicated a strategy for an internal market in services in 2000<sup>53</sup>, which involved presenting a report on the state of the service sector in 2002. The 2002 report identified a range of mainly legal barriers in the establishment of service providers, and in the promotion, distribution, sale and after sale of services<sup>54</sup>. It argued, as Commons would, that this reflected a mistrust and protectionism between the member states and had a detrimental impact on the European economy, making victims of small firms and consumers and undermining the credibility of the internal market by encouraging black market behaviour.

“The impact of the barriers identified in this report is on all sectors of the economy. Barriers to one service will trigger knock-on effects for other services and also for the wider industrial economy, given the integration of services into manufacturing. Services are intricately intertwined. They are

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<sup>50</sup> In the UK the *fiche d'impact* became under John Major (and later John Redwood) a central negotiating instrument for non action. Blair took up the same idea and established a unit in the Cabinet Office responsible for Regulatory Impact Assessments. For more on the politics of the UK's Deregulation Initiative see J.Froud, & A. Ogun 1996 “‘Rational’ social regulation and compliance cost assessment” *Public Administration* 74, 2, pp. 221-238.

<sup>51</sup> See C.Dannreuther 1999 “Discrete Dialogue and the Legitimation of EU SME policy” *Journal of European Public Policy* 6, 3, 1999, 436-455.

<sup>52</sup> The free market in services and financial services was one of the five key areas for action identified in the Kok report see page 18 of Kok 2005 op cit fine 18.

<sup>53</sup> See Commission Of The European Communities 2000 “Communication from the Commission to the Council and the European Parliament, An Internal Market Strategy for Services”, COM (2000) 888 final, 29.12.2000.

<sup>54</sup> Commission Of The European Communities 2002 “Report From The Commission To The Council And The European Parliament on the State of the Internal Market for Services Presented under the First Stage of the Internal Market Strategy for Services” COM (2002) 441 final Brussels, 30.07.2002

often provided and used in combination and feature as inputs at each stage of the service provider's business process"<sup>55</sup>

As an economic issue, the Commission's formal proposal to the Council and EP in 2004 was made under the co-decision rules that do not require unanimity in the Council of Ministers. The proposals focused on two main obstacles to a service market: the freedom to establish and the free movement of services and added additional measures to promote trust between member states. These measures included<sup>56</sup>:

<b>FREEDOM TO ESTABLISH</b>
administrative simplification measures, such as " <i>single points of contact</i> ", and the ability to complete them <i>by electronic means</i> ;
establishing certain principles for <i>authorisation schemes</i> relating to the conditions and procedures for granting authorisation;
<i>the prohibition of certain particularly restrictive legal requirements</i> that may still be in force in certain Member States aka the "black list");
the obligation to <i>assess the compatibility of certain other legal requirements</i> with the conditions laid down in the Directive, particularly as regards proportionality ("grey list").

<b>FREE MOVEMENT OF SERVICES</b>
<i>country of origin principle</i> , according to which a service provider is subject only to the law of the country in which he is established and Member States may not restrict services from a provider established in another Member State. This principle is accompanied by derogations which are either general, or temporary or which may be applied on a case-by-case basis;
the <i>right of recipients to use services</i> from other Member States without restrictive measures or discriminatory behaviour by public authorities or private operators.

<sup>55</sup> See page 8, Commission 2002 "Report from the Commission to the Council and the European Parliament on the State of the Internal Market for Services Presented under the First Stage of the Internal Market Strategy for Services" COM (2002) 441 final Brussels, 30.07.2002

<sup>56</sup> See pages 2-4 Commission of the European Union 2004 "Proposal for a Directive Of The European Parliament And Of The Council on services in the internal market" COM(2004) 2 final/3 Brussels, 5.3.2004

Clarifies MS reimburse other member states for healthcare
a <i>mechanism to provide assistance to recipients</i> who use a service provided by an operator established in another Member State;
in the case of <i>posting of workers</i> in the context of the provision of services, the allocation of tasks between the Member State of origin and the Member State of destination and the supervision procedures applicable.

<b>PROMOTING TRUST</b>
<i>harmonisation</i> of legislation to guarantee equivalent protection in vital areas (such as consumer protection, particularly as regards the service provider's obligations concerning information, professional insurance, settlement of disputes, information provision on the quality of the service provider;
<i>stronger mutual assistance between national authorities</i> for effective service supervision through clearly distributed roles between the Member States and obligations to cooperate;
<i>measures for promoting the quality of services</i> , such as voluntary certification of activities, quality charters or cooperation between the chambers of commerce and of crafts;
encouraging <i>codes of conduct</i> drawn up by interested parties at Community level on certain questions, including in particular commercial communications by the regulated professions.

As a framing directive the proposal did not deal with all issues but focused on those important to promoting the end goal of an internal market in services. An important part of the directive is what it does not address through derogations and codes of conduct for self regulation. It also employed a number of techniques – the Country of origin principle and derogations (for “general interest” services), mutual obligations, targeted harmonisation and non regulatory actions.

The proposal frequently makes play of the need to avoid engaging directly in detailed regulatory and administrative differences between states, specifically noting that:

“the country of origin principle will make it possible to achieve the objective of guaranteeing the free movement of services whilst allowing the various national regimes to co-exist with all their distinctive characteristics”<sup>57</sup>

The Country of Origin Principle was therefore a well established one, used extensively under the single market programme and with the support of the EP<sup>58</sup> and the jurisprudence of the ECJ. It stimulated reform without the additional complication of a sectoral approach, as Commission officials argued to the common nature of the problems faced in the service sector.<sup>59</sup>

But as we shall see beneath, this central principle of economic freedom, based upon long established legislation and with broad institutional support caused huge disquiet across the political spectrum of the member states, threatening the very project of European Union. In order to understand how this gap emerged and why it was so fundamental we need to briefly consider what the directive meant to those opposing it and why it meant so much to them. To propose some answers to these questions the next section examines some of the theoretical approaches to explaining the response to the service directive.

## **7 THE POLITICAL RESPONSE TO THE SERVICE DIRECTIVE**

The response to the Commission’s proposal was immediate broad and hostile. Belgian Socialist Ministers Rudy Demotte (social affairs) and Frank Vandenbroucke (employment) both challenged the directive supporting protests that attracted between 50-70,000 people in June 2004 in Belgium, only three months after the proposal<sup>60</sup>.

### *The Commissioner*

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<sup>57</sup> Page 18 Commission 2004 op cit

<sup>58</sup> EP 2002 “Review of the Internal Market Strategy” P5\_TA(2003)0058 European Parliament resolution on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: 2002 Review of the Internal Market Strategy - Delivering the promise (COM(2002) 171 – C5-0283/2002 – 2002/2143(COS))

<sup>59</sup> Specifically the Commission’s initial proposal suggested that “the legal obstacles to the achievement of a genuine internal market in services are often common to a large number of different activities and have many features in common.” See page 8 Commission of the EU 2004 op cit fnote 8

<sup>60</sup> Op cit note 10

Fritz Bolkestein, the Commissioner responsible for the directive, had pursued a seventeen year career with Shell before becoming a Member of Parliament for the V.V.D. (Liberals) in Holland, where he took Ministerial positions for foreign trade, the Atlantic Commission and Defence before joining becoming Chairman of the VVD Parliamentary Group and Commission of Liberal International<sup>61</sup>. He joined Prodi's Commission in 1999 as Commissioner for internal Market Affairs. Bolkestein was an economic, rather than social, liberal well known for his critiques of Dutch immigration policy and for criticising the beginning of negotiations for Turkish membership, as "a slap in the face" of the French and Dutch electorates<sup>62</sup>. With a style as forthright as Delors and the free market liberalism of Margaret Thatcher, Bolkestein represented a confrontational model of the Commission that was under the consensual and discursive model proposed by Commission President Prodi and Lisbon's Open Method of Coordination. The Commission's traditional method of integrating by ideological leadership supported by legally established principles merely demonstrated the gap that existed between the EU and its small service suppliers.

#### *Civil Society – beyond left and right*

Bolkestein's direct approach, founded on a clear commitment to free markets, did little to appease the concerns of those who would be affected by the proposal. But the Country of Origin Principle presented a direct threat to the core assumption that labour market regulation would be based on national level agreements. In Belgium Carlos Polenus, vice-president of the BBTK, the Belgian employees' union spoke to the BBC in advance of a protest in Brussels with Oxfam and the 11.11.11 group. He highlighted how the Directive went to the heart of long standing domestic social compromises ...

“Polish employees can be sent by a Czech temporary agency to a Belgian SME small or medium-sized enterprise that works for a large firm. That temporary agency can hire people in any EU member state and put them to

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<sup>61</sup> See <http://www.fritsbolkestein.com/profile.htm>

<sup>62</sup> Frits Bolkestein "Eight tips for the European Council" downloaded 06/09/2007 from [http://www.fritsbolkestein.com/docs/articles/20050615\\_Eight%20tips\\_en.doc](http://www.fritsbolkestein.com/docs/articles/20050615_Eight%20tips_en.doc)

work. In Belgium, it will not be required to pay the Belgian minimum wage. The Belgian temporary employment sector works on the basis of the principle of equal pay: Temporary employees receive the same wages as permanent employees in the companies where they work temporarily. Bolkestein has not incorporated this rule into his text.”<sup>63</sup>

Bolkestein’s directive had failed not only to propose a workable plan but had not engaged sufficiently with the interests of the civil society that it would affect most directly. Opposition came from all over Europe and with all manner of voice, stimulating political activity in relation to EU politics that had, until that time, failed to integrate domestic and European politics through the traditional political frameworks of Left and Right. The Left hated the directive because of its threat to national employment regulations and the Right because of its challenge to national level compromises. The use of Article 47 (2), intended to safeguard the basic rights of the self employed, to an entire sector was clearly misguided. In addition to the question of whether the legal definition of services in the proposal went beyond those of the Treaty<sup>64</sup>, the practical definition of a service was displaced from its context. There was nothing that linked the advantages of the single market in services with the potential threats, real or unreal. As PES MEP Arlene Mearthy observed:

“The Bolkestein proposal was flawed because it failed to recognise that if you want the public to support the opening-up of the market you have to convince them of the benefits and reassure them that it will not undermine working or consumer rights.”<sup>65</sup>

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<sup>63</sup> See “Belgian ministers to join 5 June march against EU services market plans” De Standaard web site, Groot-Bijgaarden, in Dutch 3 Jun 04 translated by BBC Monitoring Europe - Political

<sup>64</sup> See page 1 of W. Gekiere 2004 Towards a European Directive on Services in the Internal Market: Analysing the legal repercussions of the Draft Services Directive and its Impact on National Services Regulations Research report Commissioned by Anne Van Lancker Rapporteur Committee Employment and Social Affairs European Parliament [downloaded 6/09/2007 from <http://www.eph.org/a/1490>]

<sup>65</sup> See Arlene Mearthy “Contribution to continuation of the debate on Service Directive CRE” Tuesday 14 February 2006 - ITEM-014 – Strasbourg [downloaded 06/09/2007 from <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//TEXT+CRE+20060214+ITEM-014+DOC+XML+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y&MODE-CRE=SEARCH&DETAIL=2-319&LSTDOC=N>]

As well as ignoring the views of those affected by the directive, the Commission also ignored the importance of the process of marketisation of society through a series of compromises. Karl Polanyi called this the “double movement”, in which the response to the extension of market beyond national boundaries affected change in pre-existing social institutions<sup>66</sup>.

### *The role of the state redefined*

As well as challenging geographical boundaries the directive also challenged the boundary between the state and the economy. A core element of the service directive was that it only applied to economic services and not services of a general interest, a code for public services. This generated concern that services were charged for by public sector organisations (eg some education services) could fall under the scope of the service while others would not. This problem was most clearly felt in healthcare where not only the jobs of those working in the health service was jeopardised, but also the health of consumers. While Article 23 of the directive specified the terms under which health care could be reimbursed, practitioners were concerned that national regulations protecting consumers could be flaunted by unqualified practitioners over the border. As one commentator in the Irish Times put it:

“the laws covering a cut and blow dry at the local hairdressers should not be the same as rules governing cancer treatment, education or residential childcare”.<sup>67</sup>

The report of the European Public Health Association presented to the EP concluded that:

“The notion of ‘service’ includes any self-employed activity, as referred to in Article 50 EC, consisting in the provision of a service for consideration. The provisions of this horizontal draft do not take into account typical features of certain services, such as health care services, welfare services and labour

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<sup>66</sup> See page 150 Karl Polanyi 1944 *The Great Transformation – the political and economic origins of our time* Boston: Beacon Press

<sup>67</sup> See Bernard Harbor 2005 “No debate on 'Frankenstein' directive” *The Irish Times* page 5, May 27 2005.

market services. They could lead to the deregulation of national markets governed by national provisions including quality and subsidy requirements without any form of harmonisation and coordination. For instance, the text of the draft does not contain sufficient guarantees that it will safeguard the right to manage social security systems, such as health care systems and social welfare systems”<sup>68</sup>

The Commission’s choice was for one directive instead of the 40 that they proposed was necessary for sector specific legislation. But as the co decision process only required QMV rather than unanimity, the Commission failed to engage with the interests and concerns of those involved in core public sector services, such as the providers and consumers of health care.

#### *France and UK belittled*

Inevitably the directive was received differently by the governments of the member states. While “Old vs New” Europe was a broadly cited split this was not entirely accurate. Six states (Britain, Spain, The Netherlands, Poland, Hungary and the Czech Republic) asked that there should be no dilution of the proposal as it entered its second reading in the EP in 2006<sup>69</sup>. Given the range of reasons for opposing the directive the reasons for doing so varied for each member state. But the significance of the directive was in the damage that it did to the aspirations of two of the EU’s most powerful states. In France the Bolkestein directive had the most damaging impact. In a recent analysis of the French No Vote, Paul Hainsworth identifies it as a powerful political tool for the Eurosceptics:

“Barroso himself was identified with the liberal economic agenda that the No campaign was attacking. In this context, the proposed liberalisation of services in the EU via the European Commission’s Bolkestein directive became a big issue in the French referendum campaign. Indeed, in March 2005, Chirac felt obliged to intervene (successfully) and pressurise the Commission not to

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<sup>68</sup> See page 53 of Wouter Gekiere 2004 op cit

<sup>69</sup> See “Free marketeers fight for fullest services liberalisation” EuroNews - English Version February 10, 2006

introduce the measure, for fear of it assisting the No camp. The directive symbolised further unemployment, less social protection for French workers and a threat to France's social model. Thus 'Polish plumbers' and others in the enlarged EU who might take over or undercut 'French jobs' at home and abroad featured prominently in the No campaign, which focused strongly on the defence of public sector services in France."<sup>70</sup>

Chirac's attempts to distance the directive from the Constitution vote became almost desperate, stopping Barroso from defending the directive on a major public service TV programme days before the referendum<sup>71</sup> and claiming "that it no longer exists"<sup>72</sup>. With the French referendum lost, in no small part because of popular conflation of the free market extremes of the directive and the proposed constitution<sup>73</sup>, the controversial proposal drifted. With France calling for an end to the proposal with Germany's support, the core liberalising element of the Country of Origin Principle threatened the very existence of the proposal. For the UK Presidency, which had placed the service directive as one of its main Presidency objectives, the blocking of the proposal in the EP's October first reading was enough to take it off the agenda<sup>74</sup>. France had lost its place as first nation and the UK as first reformer.

### *The EP comes out well*

With the Commission appearing aloof and the member states reduced in stature the main institutional actor to benefit from the directive was the EP. Although in no small part due to the skill of the *rapporteur* PES MEP Evelyn Gebhardt, the EP showed that it could manage the diversity of interest through a broad consultation and reworking of the proposal to address the key issues. While the Liberals and the Greens blocked on the basis that the proposal was insufficiently or excessively liberalising, the PES and EPP and Liberals were able to reach a consensus that the

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<sup>70</sup> See pp.103-104, P. Hainsworth 2006 "France Says No: The 29 May 2005 Referendum on the European Constitution" *Parliamentary Affairs* 59,1, pp.98-117

<sup>71</sup> See "Constitution row at French TV station over Barroso cancellation" *Agence France Presse* – English March 31, 2005

<sup>72</sup> "Chirac backs new Franco-German initiative on EU services liberalisation" *AFX.COM* April 26, 2005

<sup>73</sup> See Charles Bremner "Chirac has subdued Bolkestein's monster - but he's not safe yet" *The Times* March 24, 2005

<sup>74</sup> See Lucia Kubosova "UK presidency shelves services directive" *EUObserver.com* October 5, 2005

Commission was able to support. By allowing sufficient space for the many discontents to voice their views and still proposing the resolution that the Member states would finally agree to the EP was able to generate a compromise that would match the disparity of interests involved. This included:

- Replaced the “Country of Origin Principle” with one based around “Freedom to Provide Services”, with a Commitment to Commission identification of standard harmonisation in five years.
- Reduced the scope of the directive to exclude services of a general interest
- Ensured that workers' rights will take precedence over the Directive
- Clarified links with other legislation and identified which members state obligations on establishment were illegal.

With the Council’s agreement to the compromise, the directive was able to pass in 2006.

## 8 CONCLUSION

As well as suggesting that the European social model is a contested terrain we might also question whether the distinctions of institutional political economy around class and nation prevail for the service directive. The boundaries that contain the scope of the directive diverge significantly from traditional distinctions of territory or class. For the former public services excluded from the scope of the directive are defined in terms of their “non economic” rather than their territorial status<sup>75</sup>, reflecting a broader confusion around the notion of territory in the constitution of Europe<sup>76</sup>. Traditional class based compromises were added only late in the discussion of the service directive after the first reading introduced seven amendments to ensure that the

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<sup>75</sup> The EP’s FAQ sheet on the service directive makes it clear that “... the proposal does not require Member States to liberalise services of general economic interest, to privatise existing public entities or to abolish existing monopolies, and that it does not affect the organisation or funding of these services.” Position of the European Parliament on the Proposal for a directive on Services in the Internal Market adopted at first reading on 16 February 2006. The Council’s Working Party on Competitiveness and Growth makes its view clear in recital 7a “The Directive does not affect the freedom of the Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed and what specific obligations they should be subject to” Proposal for a Directive of the European Services in the Internal Market Inter-institutional File: 2004/2001 (COD) Brussels, 10 January 2005.

<sup>76</sup> See L.Bialasiewicz, S.Elden & J.Painter 2005 “The Constitution of EU Territory” *Comparative European Politics* 3, pp.333–363

directive preserved the European Social Model<sup>77</sup>. The initial proposal by the Commission made reference to national social security systems (relevant as social services) but made no reference to a social Europe as understood in terms of class compromise. Rather than focusing on the employer/employee relationship, the proposal made significant play on another divide, that of the producer/consumer advocating a framework for protecting the latter from the former.<sup>78</sup>

Many of these cross national and class cleavages apply to other issues of EU policy making, with the EP increasingly demonstrating its dexterity at addressing these challenges. But what makes this service directive of such great interest is not so much the capacity of the EP to produce compromises that would be difficult to imagine in national legislatures, but that it has for the first time, managed to enable formal legislation that directly regulates the SME sector. While there have been many programmes before intended to promote small firms, they have in the main been provided through soft law and member states agreements, even if with the support of the European Council and other key players. The Service Directive generated conflicts that directly spoke to SMEs, and the EP's role in its effective passage demonstrates that many years of support have enabled the EP to forge its own relationship with the sector beyond the traditional mediation of the member states.

END

10000 words

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<sup>77</sup> Commission 2006 "Amended Proposal For A Directive Of The European Parliament And Of The Council On Services In The Internal Market 2004/0001 (COD) COM(2006) 160 Brussels, 4.4.2006

<sup>78</sup> Commission 2004 "Proposal For A Directive Of The European Parliament And Of The Council On Services In The Internal Market 2004/0001 (Cod)" [Sec(2004) 21] Com (2004) 2 Final/3, Brussels, 5.3.2004