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I have reviewed this completed senior honors thesis with this student and certify that it is a project commensurate with honors level undergraduate research in this field.

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Comments (Optional):

Mr. Conyer exceeded my expectations. His research project is first-rate. He is also a fine young man.

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The Impact of the European Union Through Formal and Informal Social Policymaking

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Submitted: April 16, 1999
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Introduction

The context for a discussion of the European Union is still based in the social, political, and economic conditions of the fifteen member states that comprise it. However, the development of a single European economy and, now, monetary union have created a situation in which EU-level decision-making has a greater impact on people living in Europe. While the EU enjoys its greatest competence in economic and monetary affairs, its ability to make social policy has grown in recent years. The expanded social dimension could by viewed as the first moves toward "Social Europe", an old idea that all persons in Europe might enjoy equal social, political, and economic rights. A more realistic perspective is that the EU's social policy efforts are an attempt to legitimize its efforts in the wake of the negative impact at national level of EU monetary and economic policy. Regardless, the EU through the Parliament, Commission, and ECJ have developed tools to make social policy for the entire Union. Superficially, it is hard to believe that the same body, the European Commission, provides direction on both monetary and economic policy, which severely restrict spending at national level for social protection schemes, and social policy, where the "European Social Model" is held up as an indispensable part of the future of Europe. On closer examination, it becomes evident that social policy plays a secondary role to economic and monetary policy. The lack of EU-level social policy protections to counteract the abuses created by the single market and the run-up to the single currency are not shared equally by all persons residing in the EU. There are definitely winners and losers in "Project Europe".

Women in the EU

In the European Union (EU), the fight against discrimination and the guarantee of equal opportunities for all citizens is synonymous with the rights of women. Long before the Maastricht Treaty created a Union of member states in Europe and some thirty years before the single market was created in SEA, the issue of inequality in the workplace as regards gender was considered by the then seven nation-states which met in Italy to create the European Community (EC) with the Treaty of Rome. The European Union has received praise for its part in addressing sexual inequalities through its most powerful tools, intergovernmental conferences and Directives. The European Court of Justice (ECJ) is considered part of the vanguard in feminist issues for its rulings on women's issues that have direct effect in member state courts. The institutions of the EU including the European Parliament are constantly reiterating that gender equality is a consideration in every action taken and decision made at EU level. Since the EU has placed itself squarely in the social issue of gender equality, equal opportunity is an important place to begin when considering under what circumstance the EU is willing to introduce social policy into the *acquis communitaire* that binds member states. In addition, the competence that EU institutions have created in this area allows one to study the form of EU social policy and the restrictions to its implementation in the nation state. Finally and most importantly, women are still the victims of social and economic injustice in Europe. The introduction of the euro, ratification and implementation of the Amsterdam Treaty of 1998, questions of enlargement of the EU, and the new impetus for coordinated employment strategy make "the Europe project" a foremost concern, not only for the buearacracy of Brussels, but for all European governments. The place at the table for EU

motivated social policy that continues to attack structural and indirect discrimination against women, and "positive" action measures to correct the effects of past discrimination is in question. Also, the effects of a single market, increased competition, labor mobility, and welfare state reform are introducing new problems for women in the EU and threaten to leave women at the margins of the creation of the new Europe.

Treaty of Rome and Equal Pay

When Western European leaders came together in 1957 to discuss the possibility of increased economic cooperation, the emphasis was on providing a level playing field for the independent economies of Europe to compete. A social policy competence in the EU might never have developed if the leadership of France had not insisted on including a section on equal pay for equal work for men and women. France feared that it would be at a competitive disadvantage if this employment based protection provided for in its new constitution was not also present in the six other nations that began the EEC (Hantrais, p.102). Thus, Article 119 of the EEC was adopted.

> Article 119/1 : Each member state shall ensure that the principle of equal pay for male and female workers for equal work [or work of equal value is applied] (EC, 1997b, p. 38).

The inclusion of Article 119 as a legal base in the Treaty of Rome gave the European Commission and the ECJ an opportunity to create and enforce policy with regards to equal pay from an early stage in the history of the EU. However, the basis for this interaction is developed through Article 3. It states that the EU has competence to

eliminate distortions of competition to ensure the proper functioning of the market (EC, 1957, p. 11). As pay discrimination falls under the privy of a "competitive advantage" for some member states, the EU began to take action to reduce the advantage that some employers in some member states had, but it was under this narrow perspective of pay discrimination that the EU was allowed to act. This set the stage for the historical development of sex equality rulings in the EU (Gold, p. 41). No matter how progressive the European Parliament, Commission, or Court of Justice would like to be, it must restrict its actions to combating formal sex discrimination in the workplace by member states and employers. The economic instead of social grounds for establishing equal opportunity laws has made its application to address certain discrimination difficult.

Not only did the roots of Article 119 give it an auspicious beginning, but its implementation into the member states was also difficult. The Treaty of Rome stated that equal pay provisions should be implemented in each member state by 1 January 1962 (Nielson, p. 64). The European Commission was given the responsibility of guaranteeing this implementation. While issues like agriculture and tariff policy harmonization received the attentions of European law-makers, the Commission reported year after year that little had been done in regards to either a legal base within member states to guarantee equal pay or real change in the gender gap in employment wages between men and women. Fifteen years after the initial deadline for the implementation of equal pay guidelines at member state level, the Commission could only report that "the principle of equal pay has still not been completely implemented in practice in any of the Member States of the Community, even though some of them have made considerable progress towards this aim." (CEC, 1978: p. 143).

Other provisions towards establishing equal opportunities in the workplace

As the Common market grew more and more integrated, European leaders realized that the integration of women into the labor market was a necessary step to maintaining economic competitiveness. New life was given to the role of the EU in securing for Europe a labor market open to women, again for economic advantage. The Social Action Program of 1974 paved the way for several directives, legally binding initiatives, from the European Commission to eliminate discrimination in employment practices. These laws had supremacy over any contradictory law in European member state constitutions and could be directly referred to in civil cases in all EU member state courts. Directive 75/117 added to the equal pay protection by insisting on "equal pay for equal work or work of equal value." Directive 76/207 provided that equal protection in employment be guaranteed to women, and Directive 79/7 provided for equal protection in the social security system for women. These Directives and the economic incentive for moving women into labor positions gave the European Commission the impetus to launch infringement proceedings against seven member states that were deemed not in compliance with equal pay protections (Nielson, p. 66). The European Commission struggled with the member states to insure the development of legislation at national level that represented the guarantees in the EC treaty, threatening infringement proceedings and fines, but, eventually, most of the Directives found their way into workable legislation. It would now be the work of the European Court of Justice to determine whether the practices of member states were consistent with their new legislation.

European Court of Justice Rulings on Gender Equality

One aspect of the EU which differentiates it from a purely intergovernmentalist organization is that it offers redress for EU citizens through the European Court of Justice (ECJ). Once a Directive finds its way out of the minefield of the legislative branch composed of the Commission, Parliament, and Council, the ECJ has competence to make rulings under the scope of that Directive. Its rulings are not simply a guide for the civil courts of the member states, but have direct effect at the national level if the Directive is found to be central to the functioning of the EU. The ECJ's rulings have become an extremely important part of gender policy in the EU. The first case that challenged the breadth of Article 119 was *Defrenne vs Sabena* (1971,1976,1978). The three rulings that came from this decision on sexual discrimination against a Belgian air hostess set the stage for the ECJ's active interpretation. First, the ECJ noted the dual purpose of Article 119; as a social measure to reduce inequalities between the sexes, and as an economic measure to prevent unfair competitive practices between the member states. The latter goal placed Article 119 and associated Directives squarely at the foundation of the EU so the ECJ rulings would have direct effect. (Gold, p. 42) *Defrenne* also differentiated between direct and indirect discrimination. While the ECJ found that Article 119 was sufficient to ascribe direct affect to directly discriminatory measures, it found that indirect practices must be combated with more specific provisions in the EU or member states' constitutions. The Court's unwillingness to carve out a competence to combat indirect discrimination galvanized many of the further directives on equality, but it also demonstrated the Court's somewhat formalistic approach to defining equality. Further rulings from the early 1980's sought to stamp out overt discrimination in pay whether in

the form of wages or benefits. The *Barber* ruling (1993) which dealt with pension schemes was of a particular shock to the member states who found themselves in the position of defending their policy on retirement provisions, a last bastion of discrimination (Leibfried & Pierson, p. 47). The direct discrimination rulings of the ECJ are significant, but its treatment of indirect discrimination cases is quite another story.

A formalist approach to gender equality says that if a woman is similarly situated with a man, then unequal treatment of them comprises sexual discrimination. The model worker in the EU since World War II has been the male archetype, working full-time in industry. The indirect discrimination that women suffer in the EU and the cases that have been brought before the ECJ stem, primarily, from two main departures from the "ideal worker". Women are much more likely to be part-time workers than men, and the dual burden of family and work, still shouldered mostly by women, often require them to separate from their work for extended periods. In *Jenkins vs. Kingsgate,* the ECJ found that paying part-time workers by the hour less than full-time workers directly affected women more than men and must be justified by an employer since it is a form of indirect discrimination. *Meyers vs. Chief Adjudication Officer* offers a similar vein of reasoning around a family credit that did not take into account the child-care costs which single-mothers suffer with more than any other group (Hervey & Shaw, pp. 52-56). If the ruling from these cases alone were considered, one would think that the ECJ was leaning towards a substantive definition of equality. However, *Stadt Lengerwich vs Helmig* and *Megner v. Vonderplatz* offer contrary insight. In *Lengerwich,* the Court refused over-time pay to workers who had part-time work contracts unless they worked over 40 hours in a week. The Court did not consider the added inconvenience for a part-time worker

(generally women) of working an extra hour from their normal schedule to be equal with that of a "typical worker" (generally male) who works an extra hour. In *Megner*, the Court found that exclusion of part-time workers from compulsary insurance in Germany was a form of indirect discrimination against women. However, the ECJ then found that the German government could legitimately exclude them from this social benefit on the grounds that it had economic motives and not an intent to discriminate. If employer or government financial burden can be an overriding consideration that pardons discriminatory practices, the historical gains of women through ECJ rulings become a negotiable commodity wholly dependent on the direction of enterprise and the state of the economy (Hervey & Shaw, p 58).

In *Dekkar* and *Hertz*, the ECJ ruled that, since pregnancy uniquely affects women,, their demotion or dismissal constitutes sexual discrimination. The cases of *Webb* and *Gillespie* again show the court's denial of the next logical step. In *Webb*, the ECJ found that a woman with a temporary or fixed term work contract could be dismissed if she became pregnant. In *Gillespie*, the court ruled that women on maternity leave were not necessarily entitled to a pay increase that applied to other workers in their field. The ruling went even further in the pronouncement that, while pregnant women on maternity leave were entitled to social protection, they were not in an equal position with other workers who had not left the labor market. Again, the ECJ seems reluctant to recognize that pregnancy is a condition which affects *workers* that happen to be women.

The inherent danger in a purely formalistic approach to equality is evident in the ECJ's ruling in *Kalanke*. The ECJ held that a positive action measure originating within a member state that would grant jobs to women over men if all other qualifications were

equal and if women were underrepresented in the post violated Article 109's equal protection clause. The Court refused to recognize the structural inequalities evident within the area of the labor market for which the quota system was intended. Further, the ECJ attempted to strait-jacket policy to address these inequalities from the member state level. Certainly, the ECJ is responsible for a portion of the advancements for women in Europe's labor market, but its continued reluctance to use its competence in addressing substantive, structural inequality makes it a culprit in that discrimination.

Remaining Gaps in Equality Policy

Despite the many victories of the feminist movement in Europe of which the EU and ECJ can claim a functional part, women still face labor market inequalities and are more often than men in precarious positions with regards to employment. Only 57.2% of women are active in the labor market in the EU 15. While this is up drastically from the 1960's, it is still much lower than the activity rate of men (77.5%). Those women who do actively seek employment are 25% more likely than men to be unemployed (12.5% for women versus 9.9% for men) (Eurostat, p. 127). As mentioned previously, women, for many reasons, comprise the bulk of part-time workers. In fact, women are six times more likely than are men to be part-time workers in the EU. Given the tenuous guarantees of social protection for part-time workers in the EU, this fact is especially alarming. Fixed-term or "casual" work scenarios are another all too common employment situation for women. In Catalunya and Marche, women are employed by the government under fixed-term contracts of three months to act as temporary schoolteachers, postal workers, or civil servants. Often, they are dismissed before they can fulfill the minimum number of days to receive unemployment benefits (Vaiou, p. 40). The same women are, then, re-

employed a few months later. The EU's most recent statistics also show that there is a significant gender discrepancy in wages as well. All of these factors point to a labor market that is particularly competitive and discouraging for women.

The structure of the market is not the only place where new forms of inequality threaten women. With the rise in single parent homes (up to 10%) and the increasingly older European population, women are expected to carry an additional burden with regards to care giving. A survey from 1994 showed that of women who worked at least 30 hours per week, 9% also spent as much as 4 hours per day taking care of a dependent person. (EC, 1998, p. 13) Since women are much more likely to find themselves outside of the labor market, they more often receive social benefits through their spouses as dependents. The absence of individualization of social rights leaves women in a dependent role in many families. These are some of the many gender-related inequalities that a comprehensive EU social equality agenda must consider. The efforts of the Commission to address these concerns to date have been insufficient to fundamentally change the gender-biased system.

How Monetary Union Affects Women

While the EU's social actors are quite busy with proposals and drafts aimed squarely at gender discrimination, it is the economic and monetary hands of the EU that may prove the most significant players in the social equality or inequality of women. In the run-up to monetary union, the European Council established convergence criteria for those member states wishing to obtain entrance into European monetary union (EMU). These included a maximum budget deficit of 3% of GDP and a maximum public sector debt of 60% of GDP (Ginsburg, p. 28). None of the nations met the criteria at the time

they were issued, and, as the summer 1998 deadline neared, member states began cutting programs and social benefits to lower expenditures. In France, the Juppe' plan was set to reduce costs by cutting social security payments and programs dramatically. While Juppe's plan led to his surprising defeat, the socialist government of Jospin has not completely abandoned the plan that was directly linked to meeting the convergence criteria. In Germany, the Kohl government began an austerity program that would have slashed public expenditure by $45 billion, freezing entitlements and cutting out a wide range of programs. Similar efforts in Spain and Italy were all openly concerned with meeting the Maastricht criteria (Teague, p. 118). Many scholars found that these fiscal entrenchment plans were specifically damaging to women who are more likely to be in positions of greater need with regards to social protection and who comprise almost sixty percent of persons below the poverty line in the EU. Despite the adoption of the Euro in eleven of the fifteen member states as of January 1, 1999, there is little reason to believe that the strict monetary policy of the EU and its associated toll on social expenditure will cease. At the Dublin Convention of 1996, Germany pushed through the Growth and Stability pact which would levy large fines against any member of EMU that runs budget deficits in excess of 3% of GDP (Teague, 124). With a significant fine as a deterrent, national governments are likely to continue to look for ways to limit social spending. What might be more significant for women is that new initiatives such as those dealing with child-care or economic support for persons in caring roles, measures that the European Commission insist are necessary but can not back with EU-level Directives, will be pushed aside because of budget concerns.

How The Employment Coordination Pact Affects Women

The Treaty of Amsterdam gave the EU the responsibility to coordinate employment policy between the member states. The belief of the Council was that setting guidelines for all member states to follow with regards to employment would cut down on competitive practices between member states and create a European wide dynamic aimed at battling unemployment. The response to this employment strategy by EU actors and some of the specific measures, however, are disturbing for equality policy. The employment strategy has been placed at the forefront of the EU's "social dimension" pushing other issues like child-care and part-time work guidelines to the backburner. Commission President Santer said it well when he noted that with the induction of the Euro, questions on enlargement, and the development of European wide employment strategy, the plate of the Commission is full. In the midst of NGO representatives, he made passing comments about other social protection issues, but the clear message was that social protection gains would be intrinsically linked to job creation (European Social Policy Forum). The Social Partners, comprised of ETUC and the major European employer organizations, were, in varying degrees, in agreement with President Santer's assessment. Employment-based social protection stands in contrast to universalist systems that provide protection based on citizenship or residence. Since women are more often in positions outside of the labor market or in marginalized, low-paying jobs, they are likely to suffer from the emphasis on the Jobs Summit and the Employment Coordination strategy (Hantrais, 121). Additionaly, certain provisions within the 4 pillar, 19 point, employment strategy give cause for alarm. Under a section on developing entrepreneurship, the strategy targets the reduction of non-wage labor costs, specifically

on unskilled and low-paid work. How the non-wage labor costs will be reduced is not specified. It is difficult to determine if the Council intends this as a means to further deregulate the social protection guarantees by employers to low-paid employees. In discussion of the modernizing of work organization, the EU invites negotiation towards more flexible working arrangements, "with the aim of making undertakings more productive and competitive" (EC, 1998, pp. 4-5). What these provisions mean with regards to women who comprise a large section of the low-paid, non-typical workers in the EU remains to be seen, but they are potential tools by which capital might circumvent social protection guarantees. The transfer from passive to active unemployment benefits and the development of American-style welfare-to-work scenarios seem destined to force women from positions of unemployment to positions of low paid, insecure jobs. Whether the former or latter is considered more enviable, neither constitutes the type of real, sustainable solution to the social issues confronting women that the EU is heralding in the employment strategy.

Free Movement and Its Affect on Women

One aspect of EU citizenship that EU supporters point to is the free movement of persons throughout the EU in search of employment. The right to seek better paying jobs throughout the Union is viewed as a tool to equilibrate the vast differences in wealth between member states and reduce the harmful effects of capital migration to more developed nations in Northern Europe. While on its surface, this right seems to benefit member states in the Mediterrean region, a closer examination yields some potential difficulties for women of the South. In her essay, "Women of the South after, like before, Maastricht?", Dina Vaiou describes the atypical work patterns for women in the South.

Even more so than their Northern, female counterpart, women in Spain, Italy, Portugal, and Greece are subject to non-contract, unofficial working schemes. Also, their role of primary caregiver is even more pronounced in most households. Many women work out of their homes as either desk clerk for the family pensionne, part-time crop harvester, or seamstress. They rely heavily on informal networks of friends and family to carry the double burden of caregiver and part-time worker. Their labor mobility is severely hampered by the need to maintain the community relations that are essential to their economic and social position (Vaiou, p. 44). The free movement clause is at best an unfulfilled promise to these women. At its worst, it is a sentence to follow their mates in a career move to a geographical location where no similar support network exists. Without such support systems, the role for these women of the South becomes doubly stressful and virtually impossible. The EU has refused to even discuss legislation that deals with equality for men and women in the home so the female EU national is trapped in a culture of oppression without the tools of compensation that they have developed over generations through community networks. Women in the North, too, must struggle to an extent with the Free Movement Clause. While the community structures are generally weaker and the work patterns more typical, the dual burden of care-giver and worker still provides an extra stress on women with regards to mobility. Single mothers, an increasing class throughout Europe, often do not possess the necessary structure to allow a move. Furthermore, with an ever-growing elderly population in most of Europe, the responsibility for care-giving which still is laid mainly on women will limit the promise of true labor mobility. Currently, only 3% of EU citizens take advantage of the right to move freely about the union. As the EU continues to converge and economic

stresses force laborers to move with capital, the number of EU nationals will grow. The EU's naivete concerning the affect of this increased mobility on women comprises a new form of sexual discrimination, one that must be considered at European level.

Current EU proposals regarding gender equality

The social dimension of the EU continues to push legislation on equal opportunities before the Council. The Amsterdam Treaty provided the first legal base to fight gender discrimination outside of the workplace. While legislation based on it is slowly moving through EU institutions, the article is seen as a failure to many advocates of women's rights. They sought a specific provision related to gender as a fundamental pillar in the Treaty base making it subject to qualified majority voting procedures. Instead the article applies to discrimination based on sex, race, ethnic origin, religion, and sexual orientation, and is relegated to unanimous voting of the Council. On a positive note, a new Article 3 would place gender equality in the workplace at the center of EU decisions. In theory, every policy measure of the EU must be analyzed for its effect on equal opportunities. This "mainstreaming" operation is expected to help prevent indirect discrimination in the policies of the EU. (EC, 1998, p. 6) Also, a new Article 141 allows member states to take measures that provide for specific advantages for an under-represented sex to pursue a particular career path, effectively overriding the ECJ's ruling in Kalanke. The new Employment Guidelines devote an entire pillar to strengthening equal opportunities. The guidelines suggest that member states must annually show a plan to reduce the gender gap in unemployment and reverse the under-representation of women in certain economic sectors and their concentration in others. The ETUC along with the Commission is calling for more research on implementing a social security

scheme that targets the individual instead of the current systems that are based on the idea of men as family "breadwinners". In its latest annual report, the Commission again asserts the need for economical child-care as a necessity in achieving equality. Again, it refuses to wade into the issue, however, with guidance on an enforceable directive to encourage member states to adopt provisions regarding child-care.

Conclusions

Women in the member states that comprise the EU have benefited from EU initiatives in the form of expanded work opportunities and greater pay equality. The great strides made in equality policy are in part due to a unique coalition of all the forces, economic and social, working on building the EU. Their common rallying point is the added economic advantage of integrating women into the labor market in Europe. While that economic incentive continues to drive some new equality policy, monetary union and the reorganization of social transfer schemes are EU projects that restrict women from moving closer to economic independence and equality. In addition to fighting structurally biased labor markets in their own countries without EU protections, women must increasingly be concerned with the vision that EU leaders have for the future of their citizens. By advocating greater "flexibility" in the labor market and provoking public expenditure cuts at national level, the EU has given women reason to question whether a real commitment towards economic, political, and social equality exists at EU-level, or if gender policy is simply a convenient economic tool which has run its course.

Social Exclusion and the EU

The increase in poverty and unemployment within the EU has led to debate about the EU's responsibility in addressing issues of social exclusion. Robert Anderson at the European Foundation for Living and Working Conditions describes social exclusion as a process where individuals are debarred, discriminated or disadvantaged in making their full contribution to society. The effects of this condition prevent them from receiving the benefits of society such as economic viability and social protections (Anderson, 6/22/98). Professor Norman Ginsburg at the University of North London speaks of a growing "underclass" in Europe. Real poverty in the EU member states was a condition that many had believed was vanquished by the modern welfare state, but more and more Europeans have found themselves dealing with low paid employment, long-term unemployment, and homelessness (Ginsburg 6/16/98). The questions to answer are what contributions to social exclusion the building of Europe has made and what efforts is the EU implementing to fight social exclusion.

Some statistics on Social Exclusion

To measure social exclusion by the numbers is difficult but monitoring certain statistics does give insight into the volume of people suffering from it in the EU. The rise of unemployment in the late 80's and early 90's to 12% is telling, but the fact that fully ¼ of those unemployed have been so for more than 12 months is even more disturbing. Persons are not being displaced from jobs only to move to new ones, but are falling out of the labor market altogether. This circumstance contributes to the rise in poverty in the EU. Again from the late 80's to the early 90's, 5.5 million more people slipped below the poverty line raising the total to 57 million in the EU twelve alone (EAPN, p. 10). But

unemployment alone does not account for the rise in poverty. Of the 15% of "poor" persons in Europe, 35% hold jobs and another 33% are retired (EAPN, p. 13). Twenty percent of children are in homes below the poverty line set at half the average income for a household in the country of residence. Poverty ranges greatly from member state to member state with only 5% of households below the poverty line in Scandinavian countries that stress universal social benefits and redistribution to rates in excess of 20% in countries like the UK, Portugal, and Ireland. One striking statistic is that the number of homeless persons in the EU has risen to five and a half million (Evans, Social Policy Forum: Session B). Pauperization is indeed on the rise in the EU.

Monetary Union and Social Exclusion

As stated earlier, the lead-up to EMU and the push to meet fiscally based convergence criteria served as a "convenient external pressure with which to legitimate programmes of public expenditure cuts" (Ginsburg, p. 28) in Italy, Germany, and France. Additionally, some experts estimate that as many as half a million jobs were lost and economic growth was reduced in the member states. The cuts in social protection and health care certainly contributed to the exclusion of persons already near the poverty line, and the job losses forced a new group into social exclusion. The Stability Pact whose aim is to keep public expenditures down in relation to GDP will continue to give member states an excuse to eliminate programs that help Europe's poor.

Efforts by the EU to combat Social Exclusion

In the Amsterdam Treaty, the Council of Ministers recognized the problem of social exclusion. At the prodding of the Commission, Article 117 that allows action at EU level by the Commission to combat social exclusion was included. Though action

requires the unanimous consent of the member states, Padraig Flynn of DG V said that the Commission could now propose legislation that addressed not only the employment related concerns of the poor, but also housing, education, and transportation (Flynn, Social Policy Forum). He expected a Communication on Social Exclusion to follow soon after the ratification of the Treaty. Despite the Commissioners' best intentions, the barrier to proposals beyond some small research grants to study poverty seem insurmountable in the near future. Member states are reluctant to acknowledge their poor and are, thus, unlikely to unanimously approve legislation that would force them into making large budget contributions to eradicate poverty. Not even two years ago, Germany and the UK worked together to prevent a 4th EU program against poverty to be funded for 1997 (Brand, p. 1). Again, the fiscal austerity plans forced by the Maastricht convergence criteria restrict any major funding for new initiatives at member state level. Another reason that Article 117 is not likely to spurn new legislation is that the provision to coordinate employment strategies, also included in the Amsterdam Treaty, has become the EU's unofficial catch-all for social policy. Its direction is towards active labor market measures to combat exclusion and away from provisions that aid the poor without forcing them to act termed "passive" measures.

The Employment Pact and Social Cohesion

In preparation of the ratification of the Amsterdam Treaty and the employment Title, the Commission issued a Communication that proposed the course for member states to take regarding implementation. On the surface, some of the suggestions seem aimed at reducing the levels of poverty throughout the Union. The Communication sets goals of increasing the number of persons who are offered training in the EU from the

10% average to the average of the best 3 member states of 25% within 5 years. Also, the Commission outlines a plan to reduce long-term and youth unemployment in half within five years by offering every adult a fresh start in the form of a job, training, or work practice of employability measure within twelve months of unemployment. For young people moving from school to work, who have a 20% chance of being unemployed, the proposal would offer the same opportunity within 6 months if implemented (EC, 1997a, p. 4). Certainly, these provisions are welcomed by the poor and the Social NGO's that work closely with them. The skills gap for the long-term unemployed is a problem especially in a labor market increasingly based on new technology, and this proposal seems aimed at addressing that issue. The Communication then, however, cuts to the heart of how the Employment Pact will effect social protection. The Commission sites that only one-third of the 200 billion euros that member states spend on labor are on active measures. The report states, "All social transfers should be examined as to their contribution to rehabilitation, reintegration, training, or work experience" (EC, 1997a, p. 4). Incentives are prescribed for those that seek work and are accompanied by "targeted reductions in non-wage labor costs when hiring less skilled workers" to help capital expand its workforce. By emphasizing active measures and relegating "passive unemployment support" as a last resort effort, the Commission's report has NGO's that work with those farthest from the labor market concerned that the EU is placing too much emphasis on employment as the key to unlock the door for all socially excluded persons.

At the Second European Social Policy Forum held in Brussels, Belgium in July, 1998, Social NGO's, the ETUC, CEEP and UNICE (the employer's organizations), and representatives of the European Parliament and Commission gathered to discuss the

progress of the social dimension at EU level. The three-day long debate was highlighted by intense discussion on how the different social actors viewed the increased connection between employment and social protection. A representative of DG V stated what he believed was the cycle towards social exclusion. He outlined how the unemployed move from unemployment insurance, to unemployment benefit, to social exclusion under the current model of European protection. The push factor for the unemployed to actively seek a job is exactly what is needed to break this cycle towards exclusion (DG V, Social Policy Forum: Sesssion B). Therese de Liederkerke of UNICE was highly critical of the use of the European Social Fund (ESF), the EU's direct funding budget for social activity. She said that the NGO's who are funded through ESF should target employment and vocational training only, and should look to measures of prevention of poverty instead of assistance. Mr. Julien, another UNICE representative, said that the Employment Strategy and EU funding should target the unemployed at all. He suggested that the EU should work towards strengthening capital's position so that those persons that are employed can remain so. For him, increasing funding to combat poverty was absurd (Julien, Social Policy Forum: Panel Debate). The ETUC was somewhat more sympathetic to the needs of the poor outside of employment. Emiio Gabaglio, Secretary General of ETUC, warned that the new Macro Economic Guidelines under which the member states are obligated to comply would impinge on every aspect of national budgets including social welfare. He pointed out the inconsistency between what is being said about the need for more social inclusion and the cutting back of social spending. However, Secretary General Gabaglio was clear that ETUC's response to social

exclusion is seen in the light of fighting unemployment and creating jobs (Gabaglio, Social Policy Forum: Panel Debate).

The response of the NGO's to the drive to further attach social protection and employment was mixed, but Marie-Francoise Wilkinson, Chair of the platform of European social NGO's, reacted that the fight against unemployment and combatting social exclusion are not one and the same. She said that to push employment at all costs is to create unsustainable jobs that provide neither the pay nor the social insurance necessary to pull people out of poverty. The New Deal policies of Tony Blair and the Labour Government are largely responsible for the new direction taken by the Commission and Council of Ministers regarding welfare to work schemes. The comments of a representative from the UK were, then, especially striking. He said that the emphasis on jobs in the UK as an answer to social exclusion has linked unemployment benefits to the active search for a job. Also, the tax system is using tax breaks to make work more attractive. The results of this forerunner to the new EU policy is a reduction in unemployment to 3.3%, but the average income of workers is dropping dramatically. He states that with the low-paying jobs that the Labour government is creating, people can not afford to contribute to private pension schemes and that a strong safety net can not be financed by their tax dollars. This effort alone is not sufficient to combat poverty (Social Policy Forum: Session B). A Finnish representative commented on how her country using universal protections was able to keep poverty at 5% while labor structured social protection schemes in Great Britain and Germany saw much higher rates. The redistribution effect of Finland's system prevents people from becoming socially excluded. If the system were removed, 24% of persons instead of 5%

would slip below the poverty line. The costs to bring them out of exclusion would be much greater than that to keep them above the poverty line (Social Policy Forum: Session B). The pressure of monetary union and the broad economic guidelines, however, are against universal coverage schemes like those in the Scandinavian countries. Concurring with them was the president of a grassroots homeless peoples network who found budgetary segmentation as a restriction to attacking poverty. His perception was that the homeless do not simply need employment nor do they simply need homes, but budgetary lines must be flexible enough to provide housing, training, counseling, and transportation. The current direction of the EU is away from this flexibility and will move member state funding away from it as well. It is clear, then, that the non-governmental organizations which work closely with the poor add a perspective on the Jobs Title and social cohesion efforts that neither the Social Partners nor the EU bodies provide.

NGOs and Civil Dialogue

From the Forum debate and associated literature, it becomes clear that if the truly marginalized "underclass" is to represented at all, it will be through NGO's. The European Parliament, the only EU body directly elected by the people, has little more than consultative power. The member states to varying extents are using the initiatives of the Council to harmonize downward their social protection schemes, and the Social Partners do not see their efforts extending beyond the field of employment. Only the NGOs have the capacity to implement broad-ranging programs to cover the wide range of issues facing the power at a local level. The grass-roots programs, however, are limited because they have no official recognition or legal base to negotiate policy at European level. The ETUC and employer organizations have treaty-based rights to conduct "social

dialogue" and negotiate regulations that the Council then signs into law. The parental leave and part-time work regulations are examples of their work. The NGOs, with the support of the European Parliament, have been pushing for similar status on the grounds that "civil dialogue" has no official voice in how the EU distributes its own resources and directs the member states to distribute theirs. Without this representation, the growing power of the EU moves further and further away from the concerns of the people in the member states. As expected, the employer organizations, the CEEP and UNICE, are completely against an equal status for the NGOs, but somewhat surprising is the position of ETUC. Addressing many NGO leaders, an ETUC representative at the Forum said that the Social Partners have the power to make policy on their own so they should be allowed to negotiate on that policy. Since NGOs lack the political and financial clout to make policy, they have no place as equal partners in decisions about funding and policy. The Secretary General did give his support for some type of civil dialogue involving NGOs, but the message from ETUC was clear that it would support anything on par with the Social Partners (Social Policy Forum: Open Forum).

A 1998 ruling of the ECJ and subsequent action by the Commission depicts the need for a legal base to NGO participation at EU level. The Court ruled that since there was no legal base for using the EU's budget to fight social exclusion, as the Amsterdam Treaty had not yet been ratified, all direct funding for significant action to address poverty should be stopped. The NGOs were outraged that the Commission actually froze budget lines to many of the programs while considering a course of action. Though the ratification of the Amsterdam Treaty establishes the legal base for this activity, the action

of the ECJ and Commission illustrate that the NGOs and European Parliament must be strengthened to prevent such naïve actions in the future (Platform of Social NGO's, p. 1).

Conclusions

By definition, the position of the socially excluded is a difficult one. The project towards monetary union and a liberalization of the labor markets has forced more persons into poverty and made it more difficult to rebound. The result is greater social and economic exclusion. Efforts by the European Commission at the encouragement of the "New Left" governments to combat poverty and social exclusion through employability measures and entrepreneurial incentives are not the comprehensive answer to the rise in poverty and social exclusion experienced by European citizens. While NGOs recognize that reducing unemployment should not be underestimated as a central goal for the Union, they also realize that even full employment, such as that which the United States is close to, is not the full answer to the question. In fact, using the growing power of the EU to force member states into policies that further link social protection and employment will create a situation where the poor, unemployable, and socially excluded are regarded as outsiders and leeches of society. A UNICE representative remarks that children need to be taught that when one "decides" to not work, they are choosing to be socially excluded. He remarked that everyone needed to know this simple fact (Julien, Social Policy Forum: Panel Debate). For a representative of the Social Partners to describe social exclusion and poverty as a decision for fifty-four million inhabitants of the EU is to give a clear message that the direction of the EU and Europe as a whole will carry it far from the people. A step in the right direction would be to increase the power of Social NGOs through a legal base and expand the power of the European Parliament. Another would

be the use of the Social Exclusion Article of the Amsterdam Treaty to attack poverty in all its aspects. Without some change the "New Poverty" that one writer describes as "springing up overnight" will continue to grow in number and misery (Hantrais, p. 8).

The EU and Immigrants

The involvement of the EU in the lives of non-citizens, legally resident in the member states is in its infancy. The only provisions in the Treaty of Rome or SEA dealing with third-country nationals are those that place resident nationals outside of the guarantees of EU-nationals and those that prohibit the EU from dealing in immigration policy. The member states until recent years have regarded the control of their "guests" and of their border exclusively as national issues. The Europe project, however, is not neutral with respect to third-country nationals and those seeking economic or political asylum in Europe. The exclusion of third-country nationals from the growing number of protections in EU citizenship and the economic effects of monetary union on immigrants suggest that new Europe might be built on the backs of immigrants.

Immigrants and Free Movement

Article 8A of the Single Economy Act calls for an "area without interior borders" where EU citizens can move freely in search of employment (EC, 1997c, p. 16). The treaty-base and associated ECJ case law include numerous provisions to insure that EU-nationals carry most of the social and economic benefits of being a European citizen with them as they move about the Union. This EU citizenship is granted to all persons who have national citizenship in the member states that comprise the Union. The 8 to 9 million legal, immigrant residents of the EU are, thus, excluded from this provision. Member states were so concerned with the possibility of immigrants moving across borders that SEA specifically spelled out that, "nothing in these provisions shall affect the right of member states to take such measures as they consider necessary for controlling immigration from third countries" (Ireland, p. 245). The exclusion of legal residents from the Free Movement clause and EU citizenship in general is a significant

development for a group already disposed to poverty and social exclusion. Currently, only 5 million EU citizens take advantage of their freedom to move throughout the Union to seek work, but, with increased competition and free movement of capital, many experts conclude that the labor force will be compelled to search across national boundaries for employment opportunities (Kourvetaris & Moschonas, p. 136). For non-EU nationals, this territorial relocation in the face of shifting labor patterns is not an option leaving one writer to call them the new brand of serfs in Europe. In Germany, the effects of the bifurcated policy on free movement have already been experienced. Turkish and German workers experienced lay-offs in the mines of northern Germany. The German workers were able to find employment in a nearby region of Luxembourg while their Turkish counterparts were not permitted to leave their host country. Not only is the restriction on their mobility a hindrance for third-country nationals, but, as EU nationals move in, denizens are forced further down in the economic and social pecking order. The social, political, and economic rights that immigrants have won in their member states through persistence and hard work is less secure than the new rights of EU nationals outlined in recent treaties.

Rise of Racism and Xenophobia

The condition of denizens and other immigrant populations is made worse by the rise of xenophobia and racism in the EU. An EU-wide poll published in December, 1997 showed that well over 50% of EU citizens believed minority groups were responsible for increased unemployment and that these groups abused the benefits system. (Bates, p. 7) As xenophobia and racism are intrinsically linked in the EU, the rise in racist sentiment is significant to immigrant populations. While the institutions and leadership of the EU can not be blamed solely for the rise in racism and xenophobia across the member states, the

EU must share with national governments some of the responsibility. In its attempts to gain legitimacy from the citizen population, an effort that has proven quite difficult, the EU has found itself delineating between who and what is and is not European. It is in the heart of discussions of enlargement and concerns of human rights violations. It is at the basis of European citizenship guarantees that distinguish at EU level between those who are at home and those that are guests in the EU. As the EU attempts to breakdown nationalist sentiments between the member states, it, perhaps inadvertently, helps to forge new barriers of belonging and exclusion; some of which single out immigrants as "outsiders" (Ginsburg, 6/16/98). The Right Wing parties whose agendas include closing national borders to political and economic refugees and repatriation of immigrants already within the borders are increasingly turning to EU institutions as a means to spread their propaganda. The National Front party in France, for example, has grown in national elections over the past decade resonating racist sentiment toward a depraved Algerian population. The leader of the National Front party, Jean-Marie Le Pen, however, projects his hate doctrine at the EU level as a member of European Parliament (James, p. 2). In a 1995 European Parliament debate on racism, Karel Dillen an MEP from Belgium suggested that Europeans had the right to prevent the colonisation of Europe by Asians and Africans. He suggested that repatriation of these groups was the answer. (EP Press Release) While the majority of European Parliament members and Commission administrators do not share the opinion of these radicals, the exclusionary nature of European citizenship and the wide audience for its legislation makes EU-level political activity attractive to these groups.

Loss of Social Protection Due to Transfer from National to EU level

The condition of immigrant populations with regards to social, economic and political rights vary greatly throughout the member states. Across the member states, the longer immigrants live in the nation and maintain employment, the more they receive social benefits of the state. Immigrant populations in Germany and other nations also benefit from agreements between the host nation and the sending nation that were drawn up during periods when Western Europe needed immigrant workers. These agreements guarantee certain social and economic rights to the denizens such as family reunification rights and permanent residency status (Ireland, p. 250). All of these rights are on a nation to nation basis. Like European citizens, third-country nationals have seen the social protection of their host nations diminish in recent years in response to the fiscal austerity plans pushing towards monetary union and in the call for greater labor market flexibility. While basic minimum standards with regards to parental leave, part-time work, and working conditions have partially offset some of these effects on EU citizens, denizens are left out of these new EU rights. The social agenda that the European Trade Union Commission and Social NGO's push forward regarding a Citizen's Bill of Rights, minimum wage, and maximum work week does not apply to non-citizens no matter how long they have been residents. In a period when all Europe's inhabitants are subject to cuts in social protection, denizens are particularly vulnerable to program cuts on the national level. The potential effects of the Employment Agenda on denizen populations is of particular concern. The Commission hails the coordinated jobs strategy as the answer to social problems and presents it as a tool for member states to move from passive support of the unemployed to active labor market provisions that encourage

employability. An important absence alongside the mandates for expanded opportunities of training and education for EU citizens in the Employment Agenda is a provision making these opportunities applicable to third-country nationals. The Coordination Pact is a trade-off between increasing the employability of the citizenry while deregulating the labor market to make it more competitive. Denizen workers will find themselves in the middle of a much more hostile labor market without the guarantees of training and job opportunities that EU citizens have. While member states still have an option to include third-country nationals in the programs generated by the Employment strategy, their already stressed public expenditure budgets make extending the privileges to less politically active denizens an unlikely scenario.

Without the ability to vote for European Parliament, immigrants are isolated from a voice at European level to petition for them when issues that threaten them like the implementation of the Employment Pact are introduced. The Migrant's Forum is one response to this growing void between the new social actor at work in the EU's institutions and immigrant populations of different origins, histories, and situations scattered throughout the Union. The Migrant's Forum was established by the European Commission in 1991 and represents over one hundred immigrant organizations at EU level. The Forum may have the ultimate agenda of a European citizenship based on residence and not member state citizenship, but its primary purpose for today is summed up by MEP Djida Tazdait, himself a second generation North African.

> "The main goal is to be able to represent the 8 to 9 million extra-community residents to make sure that they do not suffer in full force from the construction of Europe." (Kourvetaris & Moschonas, p. 137)

Harmonization of National Immigration Policy at EU level

An approach advocated by the Migrant's Forum and other supporters of denizens' rights is the development of a harmonized policy for immigrants that would apply throughout the Union. In fact, many sympathizers believe that placing immigration policy squarely within the competence of the EU and ECJ would result in the types of gains that women in the Union benefited from in the 1970's and 80's (Ginsburg, 6/16/98). Member states, however, through the Council of Ministers have successfully steered the EU away from the power to regulate the treatment of their resident nationals. The result is that immigrant policy with regards to citizenship criteria, access to social protection, and political activity vary greatly from state to state. While in France, jus soli automatically grants full citizenship benefits to second generation Algerians born in the country, Germany's "law of blood" and difficult naturalization procedures create a system where many third and fourth generation Turkish immigrants are still without citizenship (Ireland, 241). The lack of coordinated policy makes it difficult for European level NGO's and sympathizers in the Parliament and Commission to target denizens and other immigrant groups with aid programs.

Though the Council of Ministers balks at harmonization of treatment of third-country nationals, they have been at the forefront of efforts to forge a common policy concerning refugees, asylum seekers and others wishing to enter the EU zone. A result of the Dublin Convention (1990) was an agreement between the, then, twelve member states of the EU to allow an appeal for refugee status in only one of the member states. If that member state refuses to grant entrance, the other eleven member states are assumed to do the same (Ireland, p. 256). If a member state grants asylum, the immigrant does not gain access to move throughout the EU, but is forced to remain within the borders of the

granting state. Some legal scholars argue that this restriction on refugees is in violation of the Geneva Convention on Asylum Seekers (Overbeek, p 31). By keeping the Dublin agreement outside of the EU Treaty base, the Council restricted the rights of the ECJ and European Commission to examine it, but the framers of the agreement point to the functioning of the internal market as the reason for the pact. The new refugee policy has created a dynamic where each member state attempts to present itself as at least as unattractive as their neighbors to immigration so when Germany includes in its constitution a provision restricting the reunification rights of nationals and their families, the Netherlands follows suit to discourage potential applicants (Overbeek, p. 32). As the walls of "Fortress Europe" rise up around them, third-country nationals find themselves losing guarantees to reunite their families and marry persons from their homeland. Deterring further immigration becomes a barrier to integration of the nationals already within the member states.

Efforts made by EU on behalf of Third-Country nationals

Despite the current rise of racism and xenophobia and the historical development of exclusionary practices by the EU regarding immigrants, recent developments have brought an air of optimism to the situation of immigrants and migrant workers. Included in the new Amsterdam Treaty is an anti-discrimination clause that gives the Commission competence to develop legislation that would combat discrimination based on racial or ethnic origin. Padraig Flynn, Commissioner of DG V, proposed a framework in March 1998 that would fight discrimination in jobs, housing, education, sport, and media based on this provision even before the Amsterdam Treaty was ratified (Bates, p. 7). If ratified unanimously by the Council, the legislation would lead to implementation of such provisions by all member states. This piece of legislation is not up for consideration,

however, until late 1999. In the 1990's the ECJ has taken some initiative to rule in favor of social provisions for third-country nationals. Using the labor agreements signed by the EEC in the mid-60's the ECJ has actively created guarantees for non-EU workers and their families. In particular, Turkish workers have won full access to social security benefits (Kziber, 1990), more secure labor market rights (Singh, 1990), and renewal privileges for residency permits (Kus, 1992) (Ireland, pp. 250-253). While implementation of these decisions has been slow at member state level, the actions of the Court were all without the type of legal base that the Flynn initiative would provide. With such a base, the Court will likely sense a mandate to move further in its inclusive rulings for immigrants.

Reacting to the rise in racism and xenophobia across the Union, the European Parliament and Commission declared 1997 the European Year Against Racism and Xenophobia. This ceremonious declaration has led to a research intensive effort to determine the extent of racism and xenophobia in the workplace across the fifteen member states. Compendiums of good practice were also discussed at EU level. The effort culminated in the creation of a monitoring center for racism and xenophobia in Vienna.

Results of activity to bring free movement to third-country nationals give little reason for optimism. In 1994, a Commission Communication was distributed that sought to grant all legally residing immigrants in the EU security of residence and free movement rights. (Ginsburg, p. 18). Similar efforts have been on the table for Turkish immigrants since the mid-80's. Despite these efforts, it appears that the European Parliament and Social NGO's are losing the fight for free movement access. A recent

Commission paper relegated the free movement of non-EU nationals to a long-range goal and nothing in the Amsterdam Treaty pushes the issue forward.

Conclusions

Third-country nationals and other immigrant populations in the EU receive little attention from the policy makers. The impact of the building of Europe in the lives of these non-citizens, however, is even more significant than for EU citizens. While the EU's social and economic units in Brussels hammer out compromises for social protection of its citizens versus economic competitiveness of its enterprises, third-country nationals find themselves excluded from the new EU rights and disproportionately affected by the market liberalization. The rise of xenophobia across the Union also contributes to a situation in which immigrants, who have never enjoyed anything resembling equal political, economic, or social rights, suffer even more in the new Europe. Nothing short of extending full EU citizenship rights to all legally resident persons within the EU will prevent the further deterioration of the immigrant's position.

Summary

When instruments of the EU were used to secure greater protections for women in nations that had resisted national movements towards the same goals, many people believed that the EU might continue to be a strong actor for social justice and the promotion of equality. The EU's unwillingness or inability to attack structural gender inequality has shown that the economic incentive to integrate women into the labor market is not sufficient to move EU leadership into combat against indirect discrimination. By neglecting the unique impact of the Maastricht Convergence criteria, Employment Pact, and Free Movement Clause on women, the EU has created a dynamic that actually threatens to take back much of the gains that women have made in recent years. For the socially excluded and poverty stricken of Europe, the EU's Jobs Strategy is an oversimplification that threatens to remove the government benefits that keep them afloat. The absence of NGO's from a position of negotiation prevents the EU from truly representing Europe's poor. Meanwhile, austerity programs and increased competition threaten to add more persons to the roles of poverty. For immigrants, the weakening of member state social protection systems are especially damaging. Without the guarantees of the minimum social protections which accompany EU-citizenship, immigrants are reminded again that they are outsiders in the EU. The dynamic of European integration will likely continue to place more power in the hands of EU-level decision makers. Though the EU could certainly use that power to target social and economic injustice in the future, the current trend of the EU's institutions actually expands that injustice.

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