



Social citizenship as a marble cake: The changing pattern of right production and the role of the EU

Journal of European Social Policy
2023, Vol. 0(0) 1–17
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DOI: 10.1177/09589287231207333
journals.sagepub.com/home/esp



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Abstract

The launch of the European Pillar of Social Rights has reinvigorated the debate on the role that the European Union can exercise in the sphere of subjective rights. Such debate has traditionally focused on the limits of the current *social acquis*, considered unable to create fully-fledged European social citizenship, that ultimately remains limited to the right to reside and freely move within the EU and enjoy social rights as nationals. Conversely, this article argues that the gradual expansion of the EU's *social acquis* has slowly but clearly started to disconnect social rights from their exclusive national foundations, leading to the emergence of a new marble cake pattern of right production, which to a large extent reproduces the trajectory of federal polities. To capture this development, this article proposes an original analytical framework to dissect the notion of social rights as bundles of power resources (normative, instrumental and enforcement), which enable individuals to claim and actually receive material benefits in order to cope with a codified array of risks and needs. By shifting the attention from the formal dimension (laws and their enforcement) to its concrete practice (access and outputs), our conception connects the concept of social citizenship more directly to what ultimately matters for life chances (individualised material benefits) as well as for the social and political bonds of a community (the rights-based claim and experience of social protection). In so doing, we move beyond the boundaries of the nation-state as the only producer of social entitlements and are able to appreciate the increasing relevance of the European Union as a provider of power resources and guarantor of policy outputs.

Keywords

social Europe, EU citizenship, social rights, power resources

Introduction

Despite the limitations of Treaty competences, the so-called social dimension of the EU has witnessed a remarkable expansion over time, bringing about an

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articulated *social acquis*.¹ The latter denotes the entire set of EU measures in the social and employment domain, ranging from primary law (Treaties and Charters) to legislative provisions mandating social entitlements in secondary law, notably in the domain of work environment, access to work and social protection. The EU *social acquis* is not limited to binding legislation, but also includes budgetary resources, soft law instruments (such as recommendations and communications) and policy coordination processes.

While scholars agree on the gradual strengthening of the *acquis*, there remains a widespread scepticism about its contribution to the creation of a fully-fledged European social citizenship. Especially within legal scholarship, this notion continues to be mainly debated in relation to the right to move and reside freely within the EU, which – combined with non-discrimination based on nationality – entitles citizens to enjoy the same social rights as nationals (Börner, 2020). The rights conferred by EU citizenship remain de facto ‘isopolitical’: citizens are entitled to enter the welfare space of other Member States with the guarantee of non-discrimination, but they remain ultimately attached to the entitlements provided by the national welfare state of origin. This situation makes social rights ‘stratified’ and generates unequal opportunities to free movement, thus challenging the core principle of citizenship, that is, equality of rights (Bruzelius et al., 2017).

The classical welfare state literature has been premised on a wider notion of social citizenship, understood as a bundle of legal entitlements anchored to the sovereign authority of the nation-state. In T.H. Marshall’s theory (1950), only the latter can provide legal certainty, making access to social benefits reliable and predictable at the individual level. And only the state can mobilize the political support and administrative machinery necessary to collect revenues and organize social solidarity on a large scale. The Marshallian perspective attributes a particular importance to justiciability: the awareness of possible sanctions spurs providers into carrying out their legal duties. In the Polanyian tradition, social rights are conceived both as products and as catalysts of power resources in the class struggle which accompanied national processes of industrialization. Such rights were historically introduced in

the wake of workers’ mobilization (a collective power resource) against the social disruptions of capitalist markets. Once obtained, social entitlements became themselves power resources, making workers less dependent on the labour market thanks to the protection guaranteed by state authorities (Polanyi, 1944).

The entrenchment of social rights in the political and institutional framework of the state is a historical reality, still largely in place today. According to mainstream arguments, this is not likely to change any time soon: the market-making nature of integration and the ‘institutional asymmetry’ of the Treaties make the EU much less hospitable to the social protection logic compared to the nation-state (Scharpf, 2010). In this view, the EU is an unlikely substitute for – and not even an adequate complement to – national social citizenship, as it lacks the basic political and infrastructural capacities for guaranteeing social rights beyond the coordination of domestic systems in case of cross-border movements (Börner, 2020). The establishment of the Economic and Monetary Union has actually turned the EU into a potentially subversive force for the welfare state as such (Kilpatrick, 2018; Leibfried and Pierson, 2000).

While these are powerful arguments, it must be acknowledged that European integration and the *social acquis* in particular have started to disconnect social rights from their exclusive national foundations. This may not (yet) reflect the Polanyian logic: emerging EU social citizenship can hardly be seen as the result of a political countermovement to market integration at the EU level (as suggested, perhaps too hastily, by Caporaso and Tarrow, 2009). But the very existence of a supranational layer which participates in the shaping and concrete functioning of social rights is itself a (new) historical reality, which cannot be neglected.

The need for reconsidering the social role of the EU is especially urgent in the wake of recent developments. The COVID-19 pandemic has prompted a quantum leap in terms of both increased resources and institutional innovations in the social sphere. Let us think of the European Instrument for Temporary Support to Mitigate Unemployment Risks in an Emergency (SURE), the European Health Union and especially the Next Generation EU initiative. Most of

the new measures have capitalized (at least symbolically) on the European Pillar of Social Rights, adopted in 2017. In fact, it can be said that the Pillar and the investment that the EU has been making in its implementation, including in the framework of the Next Generation EU, has opened a new phase for ‘Social Europe’, increasing the room for achieving better balance between economic and social integration in general and for the strengthening of EU social rights in particular (Vesan and Corti, 2021).

In order to substantiate this view, a reconsideration of the traditional analytical framework for the study of social citizenship is needed. The debate on citizenship at large (that is, also covering residence, civil and political rights) has already provided a number of concepts and insights to capture the nature and logic of EU rights (for example, Bauböck, 2019). In its turn, the literature on cooperative or ‘marble cake’ federalism (a metaphor coined by Grodzins (1960), has shown that social rights can be assembled through a mix of resources provided – in variable combinations – by the federal, state/cantonal and municipal levels. Partly drawing on such literatures, this article develops a resource-based and multi-layered conception of social rights, which looks at them as bundles of three key power resources: normative, enforcement and instrumental resources. We also distinguish between rights (as power resources) and their outputs, that is, the specific substantive content (cash or services) that eligible citizens can access and which results from a production process orchestrated by public authorities. We argue that legal (normative) resources and judicial remedies (enforcement resources) are necessary but not sufficient to guarantee the actual use of a social right. For this to happen, outputs must be adequately produced, and support and procedural channels for making and satisfying claims must be made available.

Of course, the production of individual entitlements is not the only means for safeguarding and enhancing the EU’s social dimension. Ambitious and comprehensive policy strategies coupled with adequate financial resources (such as the above-mentioned SURE initiative), are key conditions for achieving this objective. We are well aware of this, but also believe that the language and practice of

rights retain a particular symbolic and functional significance in the European tradition, thus deserving dedicated attention.

The article is organized as follows. The second section presents the main elements of our conception, building on the classic approach of the power resource theory (PRT). The third section illustrates, from an analytical standpoint, the different types of resources relevant for the enjoyment of social rights, offering a preliminary examination of the role that the supranational level can play in relation to the resources identified. The fourth section offers an empirical illustration of the EU role in providing various types of power resources. The fifth section concludes.

Social rights as ‘resources of power’

Our conception of ‘social rights’ is inspired by Max Weber, who conceived subjective ‘rights’ as sources of power (*Machtquellen*) (Weber, 1978). In this perspective, the focus is less on collective actors (as in Polanyi) or on the nation state (as in Marshall) than on the empowerment of the individual as such. According to this conception, rights confer to individuals the possibility of obtaining conformity from other individuals (horizontal power) and from public authorities (vertical power). Such possibility is made effective because (and to the extent that) right holders have a bundle of power resources that allow them to claim something from someone. The Weberian conception goes beyond a merely formal-legal understanding of rights. Legislative recognition and codification of an entitlement to a given good is only the tip of an iceberg, whose less visible, but key components include the machinery for producing and delivering said good, for informing potential recipients about their entitlements and facilitating their access to the good, for monitoring the compliance of providers and beneficiaries as well as adjudicating disputes and so on. The invisible parts of the iceberg may turn out to be even more important than legal formulas for the concrete empowerment of individuals. Legal specifications of ‘who’, ‘what’ and ‘how’ are of course important, but they only confer a *potential* power. The actual and successful *exercise* of this power hinges on a wider set of

resources (*Machtquellen*) than traditionally recognized by the literature on social citizenship.

To be sure, the link between political power and the development of the welfare state has already been highlighted by power resource theory (PRT). Our conception builds on such theory but also extends it. Walter Korpi was the first to outline the PRT theoretical framework (Korpi, 1974). Starting from the individual level, Korpi underlined how it is the perceived asymmetry in life chances that triggers a mechanism of ‘deprivation–frustration–aggression’ which, filtered through the sharing of experiences, pushes people to unite and mobilize to correct this asymmetry. According to this approach, the introduction and subsequent expansion of welfare state programmes was the result of mobilization by trade unions and workers’ parties and promoted a process of de-stratification and decommodification (Esping-Andersen, 1990). The latter term has a double meaning, substantive and relational. On the one hand, the effective enjoyment of social rights has directly improved the living conditions of workers and their families, reducing pre-existing asymmetries. On the other hand, by guaranteeing access to a series of material goods (such as unemployment benefits) and decreasing the dependency on market participation, decommodification has increased the relational power of workers vis-à-vis employers, strengthening their bargaining position.

PRT scholars have concentrated mainly on the upward dynamics leading from individual level grievances and beliefs to collective mobilization and then the emergence/expansion of a variety of welfare regimes, characterized by different outputs (benefits and services) and outcomes (destratification and decommodification). These dynamics remain central today in shaping welfare state politics at the domestic level. They also play an important role at the EU level, as national and European trade unions have increased their efforts to mold the development of social policy and social rights at the EU level. Unions have become more active in the European social dialogue, in collaborating with parties in the European Parliament and the Commission (Vanhercke and Spasova, 2021), as well as through transnational cooperation, mobilization and protest (Dølvik and Ødegård, 2012; Erne, 2008; Vulkan and Larsson, 2019). This activism has faced

numerous obstacles, but over the years it has been increasingly significant (Lehndorff, 2015; Prosser, 2016; Sørensen et al., 2022).

PRT has not limited itself to analysing political dynamics but has also extensively explored welfare outcomes. In his works, Esping Andersen has used PRT not only to explain the birth and shape of welfare institutions in different countries, but also took the next step of explaining internationally divergent welfare outcomes (see Arts and Gelissen, 2010 for a review), paving the way for a rich strand of empirical literature (for example, Brady et al., 2016; Kalleberg, 2018). This theory has, however, left in the shadow the process whereby regime properties (for example, the institutional design and policy process in the domains of pensions or social services) generate micro-level individual empowerment. How do social entitlements translate into the concrete improvement of life chances at the grass root level? In what way do abstract formal norms confer to individuals the necessary power resources for claiming and accessing the material goods which are supposed to derive from norms and are obviously the vehicles of decommodification?

To answer these questions, we have to bring classical PRT full circle and spell out the further steps which, once social rights are in place, transform collectively achieved power resources (social entitlements) into an individual guarantee for right-holders to actually ‘encounter’ his/her due outputs, redressing at the micro-level the asymmetry of life chances. As shown in Table 1, the introduction of social rights generates on the one hand a collective empowerment of workers, strengthening their positions in both the labour market and the democratic arena. On the other hand, social rights consist in bundles of individual power resources which, once the outputs of rights are concretely produced, allow eligible individuals to access and ‘consume’ the output (a monetary transfer, a service).² Decommodification results from this downward process and takes place, de facto, at the moment of use/consumption.

We distinguish between three sets (a ‘tripod’) of individual power resources: normative (de-ontic and legal), instrumental and enforcement resources.

Table 1. Power resources: The micro–macro–micro cycle.

Level	Upward process	Actors/institutions	Downward process
Macro	Mobilization and 'democratic class struggle'	'Welfare state' (Social policies and Entitlements backed by the law)	Social rights as: <ul style="list-style-type: none"> • Collective empowerment • Individual power resources
Meso	Organization and collective voice	Political parties, Interest intermediation, industrial relations, public administration	Production and delivery of outputs: <ul style="list-style-type: none"> • Cash benefits • Benefits in kind • Social services
Micro	Lack of 'worldly goods' and life chances; relational power asymmetries	Individual citizens	Individual access and 'consumption' of outputs: 'worldly goods' and, thus, more chances and relational power

Source: adapted from Vandenbroucke et al. (2021)

First, rights can confer what we call normative *deontic* resources. These consists of principles formulated in official texts – such as national constitutions, EU Treaties or charters. They confer power in as much as they provide legitimate justifications for claiming compliance in general, and for demanding public authorities to enact the principles by means of legislative provisions. At the individual level, such rights do not provide immediately actionable public guarantees. Yet, the rights enumerated by national Constitutions, for example, establish an implicit obligation for political authorities to put in place the necessary formal and practical conditions for the implementation of those rights (Ferrajoli, 2007). Treaty-based or constitutional rights also create ‘negative guarantees’: no ordinary legislative act can derogate from them. At the national level, for instance, no ordinary legislative act can derogate from constitutional rights. Similarly, at the European level, the principles set not only in the Treaties but also in the Charters define the perimeters that the EU legislative initiatives cannot violate.

The key normative resources are created through secondary legislation: its acts generate legal resources in the proper sense. Legislative acts typically specify the ‘who’ (that is, the holder of the right), the ‘what’ (that is, the type of benefit) and the ‘how’ (that is, the manner of production and delivery). In other words, legislative acts create subjective rights in the full sense: active legal situations, in which right holders can legitimately demand the ‘what’, based on the ‘how’. Such normative-legal resources can also be provided through corporate channels, most importantly collective agreements.

Legal resources are the foundations of the key risk- and need-based social schemes, from healthcare to social assistance, from pensions to unemployment benefits. To a large extent they also determine the funds which must be made available for the realization of rights: benefit formulas play a very important role in defining the size of social spending. However, formal rights are not self-executing. A complex process is required for producing the ‘what’: political authorities must mandate the correct execution of such processes so that right-holders can enjoy their benefits. In this respect, to become executive, legislative provisions often need to be

accompanied by various legal complements, that is, implementing acts (creating the operative conditions for making use of an entitlement) or delegated acts (for supplementing or refining the basic legislative act). Also *soft law* plays a role, by providing guidelines and non-binding acts which go beyond ‘justification’; they can provide detailed guidance for policymakers and they can also be intended to guide the interpretation of legal resources.

The concrete access to a right requires in fact a direct encounter between the holder of a right and the administration that provides it. Through this encounter, right holders obtain what is due to them: a transfer of money or a service. We call ‘instrumental’ those power resources aimed at backing the actual access to benefits – for example, by providing supports and procedural channels for claim-making and claim-satisfaction.³ Instrumental power resources are poorly visible and poorly investigated, yet they play an important role in facilitating the exercise of rights, especially for vulnerable groups. As documented, for instance, by the literature on Southern European welfare regimes, the existence of legal entitlement *per se* is not enough to guarantee access to social rights, even in the presence of generous legal standards of ‘welfare’ (for example, Ferrera, 2007). Until the 1970s, in Italy retired workers had to wait several months (even years) to obtain their first pension payment. The situation improved thanks to the action of the *patronati*, that is, associations linked to trade unions which could be delegated by retiring workers to interact directly with the social security administration. The *patronati* remain to this date the key brokers between claimants and the state.

This points to the importance of addressing the issue of non-take-up of benefits (for example, Matsaganis et al., 2010; Van Oorschot, 1991). As shown by recent research by Eurofound (2015): the share of eligible persons who do not receive the benefits to which they are entitled (non-take-up or non-give-out) reaches at least 40% for at least one type of benefit in each member state, with peaks over 70% in Southern and Centre-Eastern European countries. In its turn, the OECD (2022) has shown that the financial supports introduced during the pandemic crisis encountered several problems in

reaching potential beneficiaries due to administrative obstacles and the lack of user-friendly procedures for applicants.

The literature on non-take-up has identified the main impediments that hinder the full enjoyment of a right (see for example, [Chareyron and Domingues, 2018](#); [Daly, 2002](#); [Van Oorschot, 1991](#)). Non-take-up typically results from four classes of factors. The first one is related to public administration: poorly accessible, complex and resource-intensive procedures; slow or erroneous assessment; lack of knowledge or skills by staff and so on. The second has to do with applicants themselves: lack of awareness of benefit/entitlement or the application procedure; feelings of stigma; cost of applying perceived to be higher than benefit. The third group of factors is linked to the properties of the benefit scheme: again complexity, lack of stability (frequent changes); stigmatising forms of conditionality. Finally, there are broader societal factors: discrimination against some population groups, such as immigrants; poor access to key resources such as bank accounts or internet and so on. Instrumental resources are aimed precisely at enabling right holders to overcome these obstacles.

Compared to normative resources, instrumental resources are more hybrid in their nature. In some cases, they are the byproduct of specific obligations on providers, in others they take the form of ancillary legal rights (such as the right of contacting the officer responsible for one's application). Often, such resources are made available by civil society organizations and unions, which support claimants in accessing their dues and assist them in claim making in case of non-compliance. In general, instrumental resources can be seen as part and parcel of the 'accessibility' dimension of social rights, as distinct from 'availability' (linked to the actual presence of a right), 'affordability' (linked to the costs – if any – of enjoying the right, for example, of co-payments) and 'adequacy' (linked to the sufficiency or commensurateness of benefits compared to needs).

The presence of legal and instrumental power resources may still not be sufficient to guarantee the effective use of a right. The structures involved in provision may resist implementing a certain standard, or implement it partially or incorrectly, or reject

seemingly correct requests. For this reason, it is important that legal rights are accompanied by a set of additional safeguards, typically consisting of the faculty to access a third party (for example, a judicial court) to obtain what is legally envisaged or to settle disputes. We call these safeguards 'enforcement power resources', which enable individuals to protect themselves against infringements of their rights and hold executive power, including public administration, accountable. As stressed by Marshall, access to justice is important for individuals seeking to benefit from other procedural and substantive rights.

To sum it up, in our conception, all three types of individual power resources should be in place for a social right to effectively materialize. Decomposing social rights into three types of power resources allows us to evaluate if this is indeed the case. It also helps to identify inequalities in social citizenship, which can arise from differential distributions of power resources: not only legal regulations, but also resources to overcome direct or indirect obstacles in accessing benefits or judicial remedies. What is more important for the purposes of this article, the distinction between the three sets of power resources allows us to analyse social citizenship in the EU as a multilevel construct: a marble cake in which the presence of power resources produced by the EU is increasingly observable, attenuating the distinctiveness and separateness of national legal systems and cultural traditions.

Social rights as power resources in the EU multi-level setting

As mentioned above, the literature on US federalism has coined the metaphor of a 'marble cake' to denote a policy system in which the different levels of government are tightly intertwined with each other, to the point that it is difficult to identify which level is responsible for what. Marble cake federalism emerged in the wake of the New Deal's social turn and especially of the 'Great Society' social policies of the Johnson Presidency during the 1960s ([Wright, 1990](#)). For example, in the US welfare system, unemployment benefits are partly funded by the federal government, partly by the states, which administer their own schemes; there is a national regulatory

framework, but also wide margins of local discretion. A similar situation can be found in Switzerland (Cheneval and Ferrin, 2018): for instance, family benefits remained cantonal responsibility until 2006, when the federal government introduced standardized basic criteria – with the cantons still free to adopt higher standards. In other words, in ‘coming together federations’⁴ social citizenship is indeed ‘multi-level’ but, especially in certain domains, the levels are so enmeshed with each other that ordinary citizens lose the awareness of their presence and contribution to the benefits provided. In a sense, marble cake provision is one step beyond multi-level provision. We argue that the EU has already embarked on a similar trajectory.

To capture the articulation of the emerging EU marble cake pattern, Table 2 illustrates what we call the entitlement chain, that is, the steps and actors involved in the production of the various individual power resources.

The rows in Table 2 show the sources of the three types of power resources. The columns show the contributions provided by the EU, member states and intermediary associations (trade unions in particular). Let us illustrate in detail the EU contribution, starting with normative-deontic resources. Here the main sources are Treaty norms and principles, which define the perimeter of EU action; an important role is also played by Charters (Frantziou, 2019). The European Pillar of Social Rights has an ambiguous legal status, but its content draws on other legal measures, such as the EU Charter of Fundamental Rights, the European Social Charter of the Council of Europe, and various Conventions of the ILO and the UN. As argued by Garben (2019), the Pillar is a sort of ‘repackaging or consolidation exercise’, re-assembling rights and principles contained in different instruments in a single document which was politically endorsed by the EU Institutions. The latter have expressed an explicit commitment to actually implement the Pillar’s 20 principles, while the Court of Justice of the European Union (CJEU), as well as national courts, may use the Pillar as a source of interpretation of the rights and principles as laid down in other instruments, including new measures which refer to the Pillar in the preamble or in the preparatory works (Aranguiz, 2020; Rasnača, 2017).

In terms of legal resources, the EU typically intervenes in the production of rights through regulations, directives and decisions. As an example, we can mention some legislative initiatives recently adopted in the framework of the Pillar, such as the Posting of Workers Directive – which extended collective agreements negotiated by trade unions at national level to all posted workers, regulated the maximum posting period and common minimum criteria for the remuneration of posted workers, as well as the access to social benefits in the country where they work (Costamagna, 2019). Similarly, by introducing a requirement for at least 10 days of paid paternity leave and at least 2 months of paid, non-transferable parental leave, the Work–Life Balance Directive has empowered EU citizens with previously absent legal resources (Chieregato, 2020). More recently, the revitalization of the EU legislative social agenda, inaugurated by the Juncker Commission was further enriched with the launch of a new Action plan for the implementation of the EPSR, including a new Directive on Adequate Minimum Wages in the EU and a Directive on Pay Transparency (Vesan and Corti, 2021).

Instrumental power resources include targeted or universal support channels, which facilitate access to social rights or to judicial arenas. The EU has placed increasing emphasis on accessibility, which extends from clear, user-friendly application procedures to awareness-raising and practical empowerment. In the domain of transnational social rights, the EU has, for example, established the SOLVIT service, whereby national administrations in each EU country provide free of charge advice and assistance in addressing problems related to social benefits, discrimination, work and residence permits and so on. Solutions are provided within 10 weeks of taking up a case. The EURES platform is another example of an instrumental resource facilitating access to cross-border employment opportunities. The Equality Bodies (EBs) and the recently established European Labour Authority (ELA) provide citizens/workers with instrumental resources to realize their rights of non-discrimination and free movement (Aranguiz and Corti, 2022). The EBs support individuals in claiming their entitlements to non-discrimination by, inter alia, providing information and advice. The

Table 2. The ‘entitlement chain’ of social rights: resources and actors.

Actors	Normative resources					
	Deontic	Legal	Legal complements	Soft law	Instrumental resources	Enforcement resources
EU	1	2	3	4	5	6
EU	Charters proclamations declarations treaties (principles)	Directives Regulations Decisions	Delegated and implementing acts	Recommendations, communications, opinions, resolutions, opinions	Information, complaint and targeted advice mechanisms, EU agencies Citizens’ support platforms	Court judgments, third- party proceedings, judicial information, and advocate General’s opinions
Member states	Constitutions	Laws Regulations	Delegated and implementing acts	Guidelines on basic levels of service	Information, mechanisms for access facilitation. Arbitration	Courts and tribunals inspection authorities
Intermediary actors and organizations	—	Framework and collective agreements	—	—	Service facilities assistance and representation of rights holders	Advice and representation of claimants

Source: adapted from Vandembroucke et al. (2021:19).

ELA, differently, targets issues that arise from the cross-border dimension of labour mobility instruments by supporting and coordinating Member States in a better implementation of cross-border mobility regulation. This includes, where necessary, mediating between potential conflicts and offering authoritative decisions.

Finally, the EU provides enforcement resources mostly through the Court of Justice of the European Union and its rulings. The Court of Justice can intervene directly in disputes between private parties, such as between an employer and an employee (more specifically in dealing with preliminary issues of national courts). It can also rule on cases involving a citizen and national authorities, allowing the former to hold his or her national authorities liable for non-compliance (Martinsen, 2015). Indeed, under certain conditions, citizens can obtain compensation for the inadequate or delayed transposition of Directives (for example, *Francovich v Italy* (1991) C-6/90).

In conclusion, by unbundling the notion of social right into its internal components, our conception allows us to move beyond the view according to which the litmus test for the existence of a right is its justiciability: no judicial guarantees, no rights. We have explicitly recognized above that justiciability is indeed very important in the overall entitlement chain, for both its direct and indirect implications. And we acknowledge, with Marshall, that in a historical perspective the establishment of legal certainty and suability procedures backed by the authority of the state represented a watershed between a long phase of local discretion, unsteady forms of mutualism or voluntary insurance, to a new phase of standardized legal entitlements. Today, however, coercion has receded into the background of administrative law enforcement, which tends to privilege other types of measures, such as orders subject to penalty or the imposition of fines. Full democratization, more transparency and accountability in policymaking and implementation as well as the expansion of the public sphere have in their turn increased the salience and effectiveness of justificatory standards and normative evaluations of outputs and access. In the new, increasingly ‘post-coercive’ institutional context of contemporary European democracies, there is increasing space for a

marble cake reconfiguration of the bundle of resources underpinning social rights and thus increased potential for a stronger EU role in orienting and contributing to their production.

The marble cake in action: Two examples

The gradual reconfiguration of social citizenship has given rise in some cases to creative and innovative modes of output-oriented enactment and implementation of rights. Unfortunately, reliable data on instrumental and enforcement resources are not easily available. A systematic presentation and analysis of the emerging marble cake pattern is thus beyond the scope of this article. We therefore limit ourselves in this section to discussing two cases which exemplify the new approach and show that our concepts do already have an empirical content. To this end, we focus on two measures where the EU action directly affects individual social rights by means of non-legally-binding sources (for example, directives and regulations).⁵ Notably, we provide evidence of how the EU can participate in the production of individual power resources by means of soft recommendations, via the new ‘guarantee’ schemes (Case 1), and by means of financial support provided under conditionality, via the Recovery and Resilience Facility (RRF) (Case 2).

Case 1

The ‘social guarantee schemes’ were introduced during the last decade, with the launch of three sets of Council Recommendations, first in 2013 the Youth Guarantee (YG),⁶ then in 2016 the Skills Guarantee⁷ and more recently the European Child Guarantee in 2021.⁸

The concept of ‘social guarantees’ was popularized by the World Bank (Gacitúa-Marió et al., 2013) and refers to those legislative provisions aimed at securing the actual implementation of ‘first’ principles, especially those codified by constitutions. Take the case of the ‘right to healthcare’: in the absence of sub-constitutional guarantees, no branch of the state apparatus would be under the obligation of actually providing health services: in our language,

there would be no mandatory production of the output (for example, medical facilities and services) and deontic normative power resources alone would have no practical effect (Ferrajoli, 2007). Guarantees specify the responsible provider and *how* a certain *what* should be produced and should reach an eligible *who*: they establish a degree of binding obligation and thus contribute to the legal certainty of social rights – especially those which regard service provision. If the responsible provider fails to act, political authorities can use legal coercion – the supply side equivalent of Marshall’s justiciability on the demand side. At the practical level, the first function of guarantees is to mobilize adequate financial and organizational resources for output production as well as to design the operational procedures for access on the side of right holders – the ‘ropes’, as it were, which must be put in place by the state administrations in order to identify and attract potential users and ‘pull’ them towards the benefit to which they are formally entitled (Suryahadi and Sumarto, 2000).

To capture the way in which the European social guarantees impact on the production of right-based outputs, we take a closer look at the YG. Table 3 identifies the basic components of such an instrument. The first column lists the legislative provisions that underpin the guarantee scheme. Each of these provisions identifies specific addressees, which are identified in column three, and in the case of the YG are either the Commission itself or (a subset of) Member States. These actors have a specific assignment which can either be a political commitment or an obligation to provide a specific content, which is identified in column four. As a result, column five illustrates the power resources which are indirectly produced by the YG scheme.

In practical terms, the YG consists in a Council Recommendation, so formally a non-binding legislative act. Ultimately, the production process is mandated by the state through the appropriate (binding) administrative acts. Member states are not obliged to act in terms of EU law, but as members of the Council they have taken a political commitment to follow the Recommendation. Some of them also have a material incentive to comply, given the availability of EU funds, via the Youth Employment Initiative, targeted to those regions experiencing NEET rates higher than the EU average. Such funds

must, however, be used exclusively to secure the recommended benefits to the final right-holders, as envisaged by the Recommendations establishing and reinforcing the YG. In terms of numbers, the reach of the YG has been significant. Cumulatively between 2014 and 2017 and considering all the eligible member states, there have been 30.4 million new starters on YG schemes, of which 28.5 million exited the process by the end of 2017. Of these, 19.2 million (67.3%) are known to have taken up work or education/training opportunities, 14.4 million in the open market and 4.8 million that were either partially or fully funded through public money (Pesquera Alonso et al., 2021). Despite the high number of young NEET reached, the YG has also been criticised because of the low capacity to reach out to the most vulnerable groups (Jeffrey et al., 2020) and for the heterogeneous effect across Member States (European Court of Auditors, 2017). It does not surprise in this respect that in the new Council Recommendation on the reinforced YG, specific attention is paid to the tools to reach more effectively young NEETs belonging to the most vulnerable social groups, including in rural and remote areas. To this end, an extensive list of actions is identified, including the strengthening of communication and information channels, the involvement of local youth organizations, the creation of specially trained mediators, the use of complementary strategies such as socio-educational animation and the improvement of profiling and monitoring practices.

The YG is clearly different from a traditional, Marshallian social right embedded in the institutional structure of the nation state. Yet, even if the YG does not envisage the formal ‘suability’ of providers on the side of right holders in case of non-compliance, it nevertheless confers both normative and instrumental resources to them. Furthermore, it is important to note that, despite their legal certainty and justiciability, Marshallian rights confer only a potential power to citizens. The concrete attainment of rights crucially depends on the availability and quality of the related outputs. Especially in the case of services, availability and quality cannot be taken for granted: public administrations may not have the capacity to deliver. In general, social guarantee schemes, like the YG, broaden the focus beyond justiciability to include

Table 3. The Youth Guarantee (2013) and Reinforced Youth Guarantee (2020): Basic structure.

Legislative provision	Addressee	Assignment	Contents	Power resources
Treaty EPSR	European commission Member states	Political commitment to propose legislation Political commitment to propose legislation	Right to assistance to improve employment or self-employment prospects: Principle 4(1) EPSR Young people employment rights: Principle 4(2) EPSR Right to support to unemployment people: Principle 4(3) EPSR	Deontic resources
Recommendation (YG)	Member states	Produce the recommended outputs prescribed for the final right-holders	<i>Who:</i> All young people under the age of 30 years who are NEET <i>What:</i> a good-quality offer of employment, continued education, an apprenticeship, or a traineeship within four months <i>How:</i> Benefits to be provided by dedicated administrations	Legal resources
		Implement recommended initiatives for facilitating access and fruition	Raising awareness and targeted communication Specific and tailored outreach to vulnerable groups Mobilising partnerships with social partners and CSOs Multi-lateral surveillance of the employment committee (EMCO)	Instrumental resources
Regulation (youth employment initiative)	European commission	Monitoring implementation	—	—
	Eligible member state	Obligation to adopt the necessary legislative and administrative acts	Funding to finance implementation of the YG	Indirectly, via the YG
	European commission and parliament	Obligation to assess and approve operational programmes and monitoring of compliance	Funding disbursement and monitoring procedures	

Source: Own elaboration.

exactly this aspect. The assumption is that what ultimately matters for life chances is the actual attainment of a benefit, which must be secured on both the supply and the demand side.

Case 2

The second example concerns the Recovery and Resilience Facility (RRF), whose overall policy

frame has inaugurated a more ambitious and sophisticated mode of EU intervention not only on domestic policies but also on social rights proper, by means of conditionality attached to financial assistance. To be sure, this is not entirely new. The infamous example of the Economic Adjustment Programmes provides an illustration of how financial assistance conditionality can be negatively used to reduce power resources, by curtailing social

Table 4. Key social reforms in the recovery and resilience plans affecting social entitlements.

Country	Policy area(s)	Legal power resources	Instrumental power resources
Austria	Active labour market policies	—	Creation new one-stop shop with targeted support to long-term unemployed for bringing them back to the labour market by facilitating access to qualification and training
Belgium	Active labour market policies	—	Reform of the public employment service to support jobseekers, capitalize on all the information available, and verify skills upon registration
Bulgaria	Minimum income	Reform of the minimum income scheme establishing a mechanism for the automatic annual update of the minimum income scheme and modifying eligibility criteria	—
Croatia	Early childcare and education and active labour market policies	Introduction new legal entitlement to a place in pre-primary school from the age of four	New measures to reach vulnerable groups using orientation and counselling to increase their participation in upskilling initiatives, with a new voucher system
France	Unemployment benefits	Reform of the unemployment benefit scheme to extend protection to self-employed	
Germany	Pensions	—	Digitalization of the pension system is included to facilitate citizens' access to information about their entitlement
Italy	Active labour market policies	Introduces of a new guaranteed employability of workers (GOL) enabling the provision of tailored made services to the unemployed	—
Spain	Unemployment benefits and employment protection legislation	Extension of the duration of the unemployment benefits and reform of the employment protection legislation, introducing new guarantees for sub-contracting activities' workers as well for atypical workers	—
Slovakia	Early childcare and education	Introduction new legal entitlement to a place in pre-primary school from the age of three	

Source: Own elaboration.

entitlements. The case of the RRF however is different and well illustrates a case of positive social conditionality that contributes to the expansion rather than retrenchment of social entitlements.

Preliminary empirical evidence (Corti and Vesan, 2023) shows how the RRF has indeed accelerated the implementation of welfare reforms and initiatives likely to remain on paper, especially for whose

countries have limited fiscal capacity. Building on an original dataset,⁹ we surveyed whether the social reforms included in the recovery and resilience plans of nine countries that affect citizens' social rights. What emerges is that, out of the 166 social reforms included in the plans, 49 directly affect individual power resources, either by introducing new rights or introducing new instrumental resources to facilitate access to already existing entitlements. Table 4 presents a summary of the main interventions included in the plans affecting either legal or instrumental power resources, and the related affected policy areas.

What is important to stress about this is that the interventions indicated in the recovery and resilience plans are subject to operational arrangements (OAs) signed between the national authorities and the Commission. For each reform included in the plans, the OA indicates the commitments taken by the member states in terms of the timeline for completion, the 'deliverables' in terms of qualitative or quantitative indicators, the authority responsible for reporting and implementing, the intermediate milestones and targets to be achieved. Furthermore, contrary to traditional Cohesion policy, the RRF does not envisage a co-financing rate from the Member States, which means that the costs for the implementation of the reform (that is, the outputs that need to be produced) are entirely covered – unless differently specified – by the RRF by means of loans or grants. In sum, the RRF conditionality affects directly the goals and contents of social rights, the actual production of legal resources, as well as the timing and quality of implementation, that is, output production. This mode of intervention seems more ambitious and intensive than the tradition and standards of US earmarked federal grants. With the RRF, the EU has definitely enhanced its role within the social citizenship marble cake – even if through the deployment of a huge amount of 'carrots' rather than the traditional sticks.

Conclusions

Historically, the development of social citizenship was intimately embedded within the process of state- and nation-building. However, and in spite of the predominantly economic character of EU

integration, the gradual expansion of the EU's social acquis has slowly but clearly started to disconnect social rights from their exclusive national foundations, leading to the emergence of a new marble cake pattern of rights' production, which to a large extent reproduces the trajectory of federal polities.

To capture this development, we have presented a novel conception of social rights as bundles of power resources, which enable individuals to claim and actually receive material benefits in order to cope with a codified array of risks and needs. We have distinguished between three sets of resources: normative, instrumental and enforcement resources. We have also shown how the EU participates to the production of such resources in creative and innovative ways. Both the example of the YG and the RRF shed light on an innovative way through which the Union affects individual entitlements by means of a new mode of financial conditionality.

Our emphasis on power resources has built on the Polanyian tradition, redirecting its focus from collective to individual actors. While recognizing the persisting relevance of the Marshallian tradition, our conception has brought into the picture an often-neglected component of social citizenship (instrumental resources) and has moved beyond the boundaries of the nation-state, showing the increasing relevance of the supranational level in providing power resources and guaranteeing outputs. By shifting the attention from the formal dimension (laws and their enforcement) to its concrete practice (access and outputs), our conception connects the concept of social citizenship more directly to what ultimately matters for life chances (individualized material benefits) as well as for the social and political bonds of a community (the rights-based claim and experience of social protection). This is not to say that social rights can exist without a legal premise, defined either at the national or European level. To be sure, without normative legal resources, neither instrumental nor enforcement resources exist. Yet, the purpose of our conceptualization is to dissect social citizenship in all its components in order to understand the EU as a policy system in which the different levels of government are tightly intertwined with each other and can contribute to the provision of power resources.

In citizens' perceptions, social rights and national citizenship are still closely associated. Today, the only explicit connection between EU citizenship and social rights becomes manifest in the case of cross-border movement. In federal polities, the role played by the central government in the production of social rights is publicly and widely acknowledged: if appropriately valorized and communicated, the European Pillar of Social Rights could greatly enhance the visibility of the EU as a co-guarantor of social citizenship and co-producer of the power resources which are necessary for delivering its benefits to European citizens. The adoption of the Pillar has brought (back) 'in Brussels' the language of rights and has opened new horizons for action on the side of the EU and for the practice of citizenship on the side of its citizens. It opens up space for the further production of power resources by the EU and to strengthen the symbolic connection between EU action and right-based practices, so that the status of EU citizens can become something that really matters for people's well-being and their socio-political identity.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This contribution has been elaborated in the framework of the Horizon2020 research project 'The Future of European Social Citizenship – EusocialCit' funded by the EU (Grant agreement n. 870978).

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Notes

1. This contribution has been elaborated in the framework of the Horizon2020 research project "The Future of

European Social Citizenship - EusocialCit" funded by the EU (Grant agreement n. 870978). The second and third section elaborate some of the results contained in Deliverable 2.1 of that project. We warmly thank and acknowledge the contribution of Frank Vandebroucke in the elaboration and conceptualization of the power resources framework.

2. As stressed above, social rights are guaranteed subjective powers to obtain a certain benefit/service. Outputs are tangible goods assembled into benefits and services.
3. Instrumental power resources are not to be confused with organizational and financial resources which are collectively mobilised for producing and funding certain material outputs. Instrumental power resources refer to access channels, procedures, information that facilitates access to individual entitlement.
4. There are two basic models of federal polities: in the first, relatively autonomous units 'come together' to pool their sovereignty while retaining their individual identities. The United States, Switzerland, and Australia are examples of such states. In the second model, a centralised polity splits into relatively autonomous units with a certain degree of sovereignty in certain domains (for example, Belgium or Spain) (see [Stepan, 1999](#)).
5. For a systematic analysis of the EU role in the construction of power resources, see Aranguiz (this special issue).
6. Formally adopted in 2013 (2013/C 120/01) and then reinforced in 2020 (2020/C 372/01).
7. Formally adopted by the Council as Recommendation on Upskilling Pathways (Council of the EU, 2016).
8. 2021/1004.
9. The dataset is retrieved from the CEPS RRF Monitor project (<https://rrfmonitor.ceps.eu/>) and includes Austria, Belgium, Bulgaria, Croatia, France, Germany, Italy, Spain and Slovakia.

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