The perspectives of the European Social Citizenship

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The first part of the paper aims to give an historical and conceptual outline of the development of social citizenship in European legal culture. Within this framework, social citizenship, along with the functions of the social state and the Marshallean understanding of citizenship, is examined comparatively with respect to American constitutionalism. Despite osmosis between Western legal systems, which have led some authors speak of a "European–Atlantic constitutional state", a clear dividing line between the European and the American, or more generally, the Anglo-Saxon legal cultures, is still discernible, and can be traced to the very different weight attached to the social element in them.

The second part explores the parallel evolution of a market driven European economic constitution and efforts towards introduction of a "social dimension" into the Community. Most of these efforts have been more rhetorical than substantive. However, the case law of the ECJ has given to the social dimension potential for a second, normative life. Within the ECJ's jurisprudence, the concept of solidarity has been applied to justify exceptions from the rules of competition, and the use of European Citizenship in cases of free movement has resulted in widening recognition of social rights of migrant persons. However, this case law has not altered dramatically the dominant economic orientation of European Law. There remain few instances where the predominance of the social element over the economic has exceptionally been recognized, to give hope for the emergence of a European social citizenship.

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