What Price Social and Health Care? Commodities, Competition and Consumers

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'The elderly care industry is rapidly consolidating around a small number of very large players'[1].

'3i and management have sold UK hospital and care home business BetterCare Group for £116m to Four Seasons Health Care, another private equity-backed owner and operator of UK care homes' (AltAssets 06/05/2005).

'If we are to let our economies develop and grow we must maintain a clear focus on the services market' (McCreevy 2005).

1 Introduction

This paper is concerned with actual and proposed changes affecting the organization and funding of health and social care services (HSCS), across the member states of the European Union. It focuses on some important disputes and problems surrounding the legal status and social purpose of HSCS through an examination of a Framework Directive on Services of General Interest (hereafter the Directive), adopted by the European Commission in 2004, which stalled within a quagmire of technical problems and political disputes, and eventually, following a vote in the European Parliament in February 2006, proceeded only by excluding health and social services from its provisions. These services are now the subject of further initiatives. It is worth noting here that the distinction between health services and social services has become increasingly blurred and, in the UK at least, the separation between social work and social care at a political and organizational level is becoming unclear, whilst at the same time both are becoming increasingly embedded in health services (see, for example, Department of Health 2006). In 2005, a move to integrate health and social care systems was announced by Care Services Minister, Liam Byrne. This move is concerned with both adult social care and all care received outside of hospitals. And more recently still, the British government announced plans to extend the marketization and commodification of health services (Department of Health 2006). This flurry of activity by the British government is paralleled in the European Union. It is this widespread interest with HSCS at the level of national and international policy that we wish to explore. We do this by mapping out policy processes in the institutions of the European Union (EU) currently affecting HSCS, and situating these within broader social developments. Specifically, the paper aims to illustrate the way in which the technical detail of the Directive and subsequent developments

[1] 3i Group Press Release, 3i sells BetterCare stake. Accessed 06/05/05 <http://www.3i.com/media/pressreleases/bettercare_060505.html>

(European Commission 2006) are embedded within contradictory political projects. We concentrate on the Directive here as it formed the springboard for a significant and on-going struggle over the direction of societies that comprise the European Union.

The official aim of the Directive is to eliminate legal obstacles to the freedom of establishment for service providers and the free movement of services, through the creation of a general legal framework applicable, subject to certain exceptions, to all economic activities involving services. The details contained in the proposal are thus of a complex and technical nature. The focus on extending the single market in services is considered crucially important to the aim of ensuring that the European economy can develop successfully in a competitive global economy. Extending the commodification of HSCS contributes significantly to this aim, for the total service sector constitutes some 70% of GNP and jobs in the European Union and offer 'considerable potential for growth' (European Commission 2003, 5). The Directive is presented as a technocratic instrument for creating the conditions for the free movement of services across borders, and this includes a legal framework for those establishing services as well as for consumers of services.

In this project, HSCS currently have an ambiguous status, to which we turn below. Examining this status points up the way in which legal and organizational categories can never be merely technical issues, but are embedded within normative assumptions and ideological visions about what constitutes desirable social organization. In order to elucidate this claim, the paper turns first to a legal case in the UK that revolved around the question of when the provision of health and social care services constitutes an economic activity. This was an important case, because activities considered to be economic are governed under a separate set of regulations to activities deemed to be 'of general interest'. Thus, there is a legal distinction between activities of 'economic interest' and those of 'general interest'. The former come under the jurisdiction of competition law whilst the latter come under the regulation of public authorities. This case flagged the ambiguous status of HSCS currently, an ambiguity that has become a problem for policy makers and service providers, both private and public. The significance of the problem is thrown into sharper relief when the economic value of the service sector in general, and HSCS in particular, is taken into consideration. This economic dimension promises the opportunity to extend the 'entrepreneurial economy' of the member states of the European Union, considered essential to successful regional competition within a global economy. Developments in HSCS, then, are being driven importantly by the politics of marketization – opening up service sectors to competition and 'choice'. Marketization of HSCS involves the specification and coordination of service 'chains': that is, it involves stipulating and politically managing which service segments belong in which markets and what links and separates the segments to and from each other (see Dicken 2003, on production chains and international markets in services).

The second section of the paper examines the several policy areas in the EU currently affecting HSCS and shows how addressing the apparent ambiguities in the economic and legal status of HSCS has raised a set of problems that do not lend themselves to easy resolutions. These problems are are particularly acute for the EU as it is one of the biggest political blocs within the World Trade Organization (WTO), where the impetus to marketize and 'liberalize' (or 'privatize') services began a decade ago. At the present time, all major governance institutions – the EU, WTO, Organization for Economic Cooperation and Development (OECD) and International Monetary Fund (IMF) - are proponents of the commercialization of health and related services. In this context, the blurring of the boundaries between social work, social care and health services is highly significant. To

derive the maximum economic benefit from the HSCS sector, it is necessary to effect a transformation in the status of these services; they must become commodities, goods to be traded competitively, and patients and service users must be transformed into consumers.

This is by no means a straightforward process. In the EU, such a transformation points to the 'local' dimension of apparently 'global' policy processes. For the EU, the attempt to commodify HSCS highlights political contractions stemming from deeply-held beliefs and institutional interests. This is because there are contradictory policy mandates, in particular the contradictory demands of the 'cohesiveness' and 'competitiveness' agenda of the European Union. In many of the member states of the EU, the development HSCS has been a core of the development of welfare states, and they are held to be, in the official documentation of the EU, the central plank in the maintenance of a European 'social model' of development, based upon a set of values that include solidarity and cooperation between the citizens and countries that make up the EU. This model is held to be an 'essential component' of the EU's economic strategy. Here there are attempts to ameliorate inequalities between different social groups, even though many of these inequalities increase under the impact of privatization and marketization. In particular, inequality is gender-differentiated because of the differences between men and women in terms of access to and control over assets and economic resources (see Çağatay and Ertürk 2004). If market relations reflect, create, and reinforce existing social relations of inequality (Radin and Madhavi 2005), then it is difficult to see how extending markets can achieve 'cohesiveness'.

The third and final section of the paper turns to wider questions surrounding the Directive in order to illustrate that there is more at stake in the move towards health and social care markets than simple economic transactions between service 'producers' and 'consumers.'The problems of reconciling 'cohesiveness' and 'competitiveness' are essentially political questions that are embedded in deeply-entrenched and competing visions of how best to organize human societies.

The implication of the analysis in this paper is that commodities are situated in complex networks of cultural, political and economic spheres of action and express the contradictory characteristics arising from the tensions between these spheres. Appadurai (1996), examining the production of commodities from an anthropological and historical perspective, has shown that the status of a 'commodity' is not fixed, but changes over time and across space. That is to say, something can be of use without being traded, but can shift to becoming tradeable and thus commodified under altered political and social conditions, a process he refers to as 'commoditization'. In short, the contradictions seen in the EU Directive are both symbolic (in the sense that they express different definitions and meanings of, in the case presented, HSCS) and material processes (in the sense of exposing the different interests of diverse constituencies around ownership and control of actual or 'candidate' commodities). These meanings and actions are conjoined to political actors whose struggles around commodity forms are often struggles around deeper moral questions about how society should be organized, questions that do not easily lend themselves to technocratic policy solutions. Such policy solutions, in the case of HSCS ostensibly about subsidies to particular enterprises and access to care services, conceal the way in which policy initiatives and programmes are embedded in normative assumptions about human life and how it should be ordered (O'Brien and Penna 1998).

2 When is a public service not a public service?

A fairly obscure legal case in the UK concerning the delivery of health and social care was the original impetus for the research that led to this paper. The Office of Fair Trading (OFT) reported that in November 2000 it had received a complaint from the Managing Director of the BetterCare Group Ltd, a private social and residential care company, about the contract price set by the North and West Belfast Health Services Trust. The complaint was that the North and West Belfast Health and Social Services Trust (hereafter the Trust), a direct provider, as well as purchaser, of social and residential care services, was abusing its dominant position as the sole purchaser of residential and nursing home care services from the BetterCare Group, by offering unreasonably low contract prices and unfair terms. The OFT did not consider the complaint valid because in its view the Trust was not engaging in economic activities and therefore was not acting as an undertaking within the meaning of the Competition Act 1998. The BetterCare Group appealed to the Competition Commission Appeal Tribunal (CCAT), set up following the Competition Act. The CCAT found in August 2002 that the Trust, in running statutory residential homes and engaging in the contracting out of social care to independent providers, was acting as an undertaking (e.g. economic entity) for the purposes of the Competition Act 1998. The BetterCare Group's complaint of abuse of a dominant market position by the Trust was then remitted back to the OFT (see OFT 2003, paras 1-3). After consideration the OFT came to its conclusion that the Trust was not an undertaking:

'The OFT therefore finds that: (i) the EHSSB and the DHSSPS do not carry out economic activities in respect of the provision of residential and nursing home care and therefore are not undertakings in this case for the purposes of the CA98…' (OFT 2003, para 69).

At first sight, the OFT ruling appears to set parameters for the operation of specifically public services that may be rightfully protected from the depredations of private capital and to identify the rights that citizens have in respect of health and related care. In reality, however, the ruling is indicative of a larger tussle between ideological conceptions of what 'public' and 'private' mean in respect of those services. In this regard, it is instructive to note that, in spite of the OFT ruling that it was not an undertaking and thereby not abusing a dominant market position, the Trust later sold off its residential and social care services anyway – thereby indicating that, at least in respect of the right to dispose of property, the Trust could, and indeed did, act as an undertaking.

Subsequently, the other key player in this minor legal drama also witnessed a change of status and fortune. In 2005 the 3i Group plc, described as Europe's leading private equity and venture capital company, announced the sale of its stake in BetterCare to the Four Seasons Group for £116m, a more than respectable return on an initial investment of £6 million. The growth in BetterCare's market value was consequent on the growth of its market share in HSCS. In 1996 the company operated three elderly care homes but expanded rapidly to 26 homes in 2005, making it one of the top 10 operators of elderly care homes in the UK. Commenting on the strategic advantages of acquiring the BetterCare operation, Ian Downing, 3i Investment Director, stated that:

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'The elderly care industry is rapidly consolidating around a small number of very large players, and we believe this acquisition offers great opportunity in the current climate for a strengthened Four Seasons/BetterCare group'[2].

The Four Seasons Group web page gives some indication of the size of its own operation. Here, the Group boasts that it cares for over 15,000 people and employs some 19,000 staff, that its Care Homes Division operates approximately 190 homes in England, 50 in Scotland and 60 in Northern Ireland and the Isle of Man. The types of care provided include care for people who are elderly and either frail or mentally infirm, respite care, rehabilitation, intermediate care, terminal and palliative care as well as care for younger persons suffering from chronic conditions. There is also a Specialised Services Division comprising four Brain Injury Rehabilitation Centres and also four hospitals providing rehabilitative care for young people with eating disorders or acute psychiatric disorders, as well as adults with psychiatric needs. Recently, the Four Seasons Group itself was acquired by Allianz Capital Partners from UK private equity group Alchemy. Finally, a further indication of the capital value already flowing through HSCS in western Europe can be seen from figures for 2004, with more than euro 1.57 billion of venture capital investments in health care companies, according to Ernst and Young Dow Jones Venture One (this figure however also includes the highly profitable biopharmaceutical industry)[3].

These strategic mergers and acquisitions present a clear picture of how deeply rooted is private capital in the service chains that link together different parts of HSCS and hint at the kinds of pressures that are placed on public policy. In important senses, public policy is forced into a reactive, rather than a proactive stance: it must respond to the economic reality of private control over HSCS service chains rather than set out the prior conditions under which such control can or should be exercised.

There are many things that can be commented upon about these examples – including the unrepentant suggestion (above) that caring for elderly people comprises an 'industry.' Here, we would point out that, as Lethbridge (2005; 2005a) found, in the UK and regardless of debates, lobbyings and compromises at the European level, there has already been a widespread transfer of care from the public sector to the private sector and a significant expansion of the private residential and home care sector, with local authorities purchasing more home care services from the private and non-profit sector than they deliver themselves. Lethbridge goes on to show how the social care market in the UK is dominated by a group of five companies, writing that:

'Private equity, venture capitalists and business groups involved in the service sector, are the main shareholders. These groups are interested in a good rate of return on their investments and change their shareholdings in these companies regularly. Apart from BUPA, these companies were set up in the 1980s and 1990s, following changes in community care legislation. They have had several changes of ownership.' (Lethbridge 2005, 7.1).

Nor are these developments confined to the UK. From the 1980s onwards, across Europe, there has been an expansion in private and non-governmental provision of social care services (European Commission 2006a), and, according to Player and Pollock (2001, cited in Lethbridge 2005, 7.4) the significant and rapid expansion of a very young economic sector.

[2] ibid
[3] http://www.altassets.com/casefor/countries/2006/nz9119.php

On this evidence, it is little surprise that caring for elderly people is described in industrial terms. The range of services mundanely considered as part of the 'welfare state' (however ambiguous the term is in reality) turns out to be anything but a collective and publicly provided set of services overseen by elected governments to which citizens have rights of access and use. Instead, increasingly, they comprise a chain of 'undertakings' dominated by the profit motive. The situation generates a dilemma within the regulatory framework of the EU. On the one hand, the provision of state-centred welfare services has a long and turbulent history in many European countries: such services have been associated with (amongst other things) a necessity to secure social order in urbanized, wage-based industrial systems, and a means of supporting personal status transitions – from childhood to adulthood, from education to employment, from employment to retirement, and so on – as well as symbolizing collective responsibility for individual risks – such as unemployment and ill-health. On the other hand, the incremental marketization and privatization of various welfare services over the past two decades has blurred and reconfigured the boundaries between public and private, causing complications in relation to their funding and regulation. The legal case brought by BetterCare against the Trust on which we commented above has been paralleled by cases in other service sectors in the Court of Justice of the European Communities (see, for example, C-280/00, Altmark Trans GmbH, 24 July 2003).

It is very difficult to differentiate clearly between 'services of general interest' (funded wholly by the state) and 'services of general economic interest' (services of which a component is meant to serve the general interest and which consequently receive a state subsidy). In reacting to increasing private sector involvement in the provision of HSCS states encounters two significant problems: one is the creation of a 'level playing field' between public and private sectors, the other is the fact that states both provide services and regulate the conditions under which they are provided. The insolubility of these problems was characterized by Claus Offe (1984) as the central contradiction of a welfare state: it is caught between its responsibilities for social welfare (i.e., ensuring that limits are placed the operation of markets for the collective good) as well as economic development (i.e., ensuring that markets are freed from undue interference by vested interests in the name of the collective good). More succinctly, of course, Habermas (1975) encapsulated the core of this contradiction in terms of the different logics underpinning 'social reproduction' and 'system reproduction', whilst Hindiss (1987) expressed it as a dilemma of the historical clash between the logics of the political state and the capitalist economy. Although this contradiction is most famously expressed in the abstract, theoretical language of social science it is important to remember that it has immediate, tangible consequences. In practical terms, the contradiction is expressed within the European Union as a series of debates, compromises and fudges around the 'limits' of free markets in HSCS and related sectors. As the European Council itself noted (1995, para. 15) the problem with market forces is that 'the potential benefits might not extend to the entire population and the objective of promoting social and territorial cohesion may not be attained. The public authority must then ensure that the general interest is taken into account.' In other words, whilst markets promise potential (private) benefits they invariably generate (social) risks and require vigilant public authorities to interfere in order to socialise the risks that the privatization of services entails.

The efforts to overcome this contradiction are obvious in the conflicts and complexities surrounding the marketization HSCS. The dilemmas of contradictory mandates have beset the EU for over a decade, and recent developments are embroiled in further struggles over whether social welfare responsibilities will remain under the legal rules governing citizen

rights, or be transposed into a legal regime governing consumer rights or, indeed (and more likely), suffer the ambiguities of being locked into both. We exemplify these conflicts by turning next to policy developments in the European Commission.

3 When is a service of general interest not a service of general interest? The European dimension.

'In the Union, services of general interest remain essential for ensuring social and territorial cohesion and for the competitiveness of the European economy' (European Commission 2004a, para. 2.1).

The quotation above is a neat summary of one of the key contradictions of contemporary welfare policy. The role of the European Union in social and health care policy historically has been limited because the principle of subsidiarity, enshrined in the founding treaty of Rome, allows national governments to develop their own social welfare policies within the frameworks adopted by the EU. Social welfare was very low on the agenda of the early development of the EU, and has also (along with taxation policy) been so fundamental to the political, economic and ideological development of many European nations that it is embedded in the tacit, operational, regulatory and experiential soil of their modernization, and thus always a politically contentious, almost taboo, area. However, recent internal market legislation proposes a highly important change to this situation. The European Commission adopted a Framework Directive on Services of General Interest in January 2001 aimed at removing barriers to free trade in a broad range of services within the EU, covering purely commercial services as well as social services such as health care and household support services (see European Commission 2004).

The Directive proposes that 'personal social services', a term that encompasses both health and social care, should be considered a Service of General Economic Interest (SGEI) and so subject to competition law, marking a shift from the current status as a Service of General Interest (SGI), that is not subject to competition law. It is not easy, in practice, to define the concept 'of general interest' nor the non-economic nature of a service. There is no definition of 'Services of General Interest' in EU Treaties – the term derives in Community practice from the term 'Services of General Economic Interest'. This term is used in Article 90 of the Treaty of Rome to refer to 'market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations' (see European Commission 2003). SGI have no specific legal status but are generally referred to by reference to Article 2 of the Treaty of Rome, Article 16 of the Amsterdam Treaty and Article 36 of the Charter of Fundamental Rights, which commit the European Commission to 'take full account of the specific role of services of general interest in the policies and activities falling within its sphere of competence' (European Commission 2004a, para. 2.1). Healthcare and related welfare and social services linked to health, such as home help and meals, residential care, rehabilitation and family support are most often delivered through public, non-profit or charity providers and are defined as 'services of general interest'. The blurring of boundaries between public and private provision occurring in the last two decades has made the originally unclear distinction between SGEI and SGI even more so, thus adding to problems of their legal regulation. In particular, the vexed question of state subsidies arises in relation to the distinction between SGI and SGEI, with various Directorates of the European Union needing to establish clear regulations and legal frameworks for trading in services. At the same time, trading across borders in goods and services requires standardisation of various criteria and regulation must link with the WTO Agreement on Technical Barriers to Trade.

The WTO agenda is based upon a neo-liberal economic strategy, in which services of general interest simultaneously 'also contribute to the overall competitiveness of the European economy and are provided in the context of continuously evolving markets and technologies.' (European Commission 2000, 1). Additionally, 'The globalization of trade, the completion of the internal market and rapid technological change bring about increasing pressure to open new sectors to competition. It is against this background that the European Council of Lisbon requested the Commission to update its Communication of 1996 on services of general interest in Europe' (European Commission 2000, 1). This Communication of 1996 needs to be understood in the context of the establishment of the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) which came into force in January 1995, and began the process of 'liberalizing' public services to market relations. The GATS is the first and only set of multilateral rules covering international trade in services and covers all internationally-traded services with two exceptions, one of these being services provided to the public in the exercise of governmental authority (services of general interest). In January 2000, WTO member governments started a new round of negotiations to promote the progressive liberalization of trade in services. Services are of importance because of the shift from an industrial to a service economy in the 'advanced' nations. For example, trade in services (numerous economic activities that are not agricultural production or manufacturing) is a major part of the UK economy, accounting for 70% of GDP in 2001 and employing 77% of the workforce. (Wölfl 2005). Further growth of the sector is considered to be a priority by the Department for Trade and Industry, and the government, especially the Chancellor, Gordon Brown, are keen advocates of the GATS process (Penna 2004). Similarly, services represent some 70 % of Europe's economy and 90 % of intra-community trade (European Commission 2003).

The services economy is heavily dominated by transnational corporations that are highly influential in the development of new rules governing the world economy (Sassen 2000) through their active engagement in corporate lobby groups that set the agenda for the major political blocs within WTO - the EU, US, Canada and Japan – and exert substantial power within policy-making in the EU (see Balanyá et. al. 2003). Discussion on the liberalization of SGI in the EU started as soon as the GATS came into force, with a document from the Commission (European Commission 1996) that established general policy orientations and stressed the importance of combining the economic advantages of the opening up of markets with general interest requirements. A further communication (European Commission 2000) updated the 1996 policy orientations and reiterated the importance of competition in a social market economy, whilst yet others conveyed the same message (e,g., Commissioner Monti 2000). Subsequently, a raft of documents (c.f., European Commission, 2001a, 2001b, 2002, 2002a, 2002b, 2002c) appeared that testify to the difficulties inherent in this liberalization project, especially problems with defining and separating SGIs from SGEIs and, allied to this, difficulties with state subsidies to either category of service when SGEI carried a 'public mission' mandate. In this context, such is the importance of the Directive that ten (EU) parliamentary committees are currently working on it. The Committee on the Internal Market and Consumer Protection is the lead committee.

4 Competition v Cooperation: the decline of public responsibility?

The real difficulties inherent in the Directive began to emerge when, in 2003, the European Commission initiated a discussion and consultation about the role of the EU in arriving at clear definitions of SGI and SGEI and the way they are organised and financed in a process launched by a Green Paper and followed by a White Paper on Services of General Interest.

Throughout the policy documents discussing the importance of services to the aim of competitiveness in a global economy had been the specific claims that HSCS were an important element of the shared values underpinning the European model of society, meaning that 'European societies are committed to the general interest services they have created to meet basic needs. These services play an important role as social cement over and above simple practical considerations. They also have a symbolic value, reflecting a sense of community that people can identify with. They form part of the cultural identity of everyday life in all European countries' Furthermore, 'The Community's involvement with services of general interest is in the context of an open economy which is based on a commitment to mutual assistance ('solidarity' for short), social cohesion and market mechanisms'. (Committee on Employment and Social Affairs 2005, 2-3).

Thus, HSCS fall between two different policy mandates: they are caught between their role in policy initiatives to expand markets and stimulate competitive economic development, and their role in delivering social rights and securing social solidarity and cohesiveness. The reams of documents issuing from the Directorates and committees of European Union, and including the Directive, contain the expectation that HSCS can aid in generating both competitiveness and cohesiveness, market development and social stability. Very recently the Director-General for Competition (European Commission 2005, para 682) affirmed this observation in spelling out a situation whereby the 'EU system is based on the principle that national governments should not grant or maintain any measure to public undertakings which conflict with the competition rules, while recognizing the importance of services of general interest'. In a paper on the reform and modernization of social protection systems (European Commission 2004b) HSCS as part of social welfare measures were conjoined to issues of competition, provoking significant criticism. Such criticism was acknowledged in the Report on the consultation launched by the Green Paper (see European Commission 2004c), and tackled in the White Paper which followed (European Commission 2004a). Since then the Directive has emerged under a co-decision procedure which complicates the principle of subsidiarity. This has increased the significant hostility to defining health and social care as SGEI that has been expressed during the passage of the Directive (see for example, European Economic and Social Committee 2005, Committee on the Internal Market and Consumer Protection 2004, 2005, Committee of the Regions 2005) with the consequence that the European Commission (2004a, para 3.7) has acknowledged that:

'The consultation has also highlighted the differences between various services of general interest and the different needs and preferences of users and consumers resulting from different economic, social, geographical or cultural situations. In addition, it was stressed that the personal nature of many social and health services leads to requirements that are significantly different from those in the network industries'.

The political outcry that has met efforts to extend the commodification of HSCS is not difficult to understand. Historically, welfare gains for the population have been the result of prolonged political struggles that arise precisely because of the failure of markets to deliver the basic necessities for social reproduction and social stability (see Ashford 1986, for example), with the culmination, in many European countries, of post-war welfare states and their linking of welfare services to social rights of citizenship. It is this that enables claims by the European Commission (2001, para. 1) that SGI may be viewed 'as social rights that make an important contribution to economic and social cohesion'. Awareness of this is enshrined in the founding treaties of the European Communities with the emphasis on services of general interest as a key element in the 'European model of society' (c.f. European Commission

2001), based upon a set of shared social values and goals that include solidarity, universal access to essential health and social services, and a high level of social and employment protection (Committee on Employment and Social Affairs 2005). It is this model that allows the European Commission (2005a, para. 3.1) to claim that 'Health is a basic human right'. The Commission goes on to state that 'In this context, it should be noted that the Commission proposal for a Directive on services in the Internal Market only covers services that correspond to an economic activity. It does not cover non-economic services of general interest but only services of general economic interest…General interest services linked to the function of welfare and social protection are a matter of national or regional responsibility. Nevertheless, there is a recognised role for the Community in promoting cooperation and coordination in these areas' (ibid, para 67). Assurances that member states need not necessarily liberalize HSCS carried little weight given that the aim of the Directive, stemming from the GATS, is to make services tradable and carries the requirement to 'progressive liberalization' under Article XIX, through commitments across a fuller range of sectors and through the reduction or elimination of limitations. As GATS Article XIX(1) requires that successive rounds of GATS negotiations should achieve 'a progressively higher level of liberalization', WTO members are obliged to provide commitments that would relax or make less restrictive market access to services. At the same time, the OECD Competition Committee is discussing the extension of competition in health professions (European Commission 2005, para 684).

What is important for our purposes here is that because the Directive specifically defines health and social care as SGEI, and because the Directive's legal basis is what is known as a co-decision procedure, a new legality would govern health and social care services and their users. This is currently the subject of intense political disagreement within the EU. The Commission had originally hoped that the Directive would be adopted by the end of 2005. However, a hearing in the European Parliament scheduled to vote on its first hearing opinion in October 2005 was deferred in order to seek some common agreement on HSCS. How this is to be reached is unclear, for what is at stake is a struggle between different and incompatible models of development, in which HSCS play a key role as technologies for the implementation of change.

The Committee of the Regions, in its many critiques of the Directive, echoed the views of innumerable others when it suggested that competition law was not the most appropriate mechanism for the regulation of HSCS, as 'social and health services in most European countries are founded on the principles of solidarity and collective funding' (Committee of the Regions 2005, para 1.28). In accounting for the delay in bringing the Directive before Parliament the major stumbling block lay in 'finding the balance between the need to open this sector up to competition and the need to preserve the European social model. Divisions over this complex issue go beyond the usual political and national rifts' (European Parliament 2005, 4).

That these divisions are so fundamental can be explained by the fact that they are about the direction social development should take. As Boual (2000, 5-6) notes, there is currently 'a structuring of the European space vis à vis that of the USA. It has important consequences for cultural behaviour and for the ways the social and economic lives of different countries are ordered'. The path to modern social organization in Europe has been profoundly influenced by the political and philosophical legacy of the continental Enlightenment (O'Brien and Penna 1998). In particular, the notion of the 'general interest', is usually attributed to Rousseau ([1762] 1987), and derives from his discussion of the 'general will'. This refers to a

situation whereby citizens exchange some freedoms of their individual lives for the civil liberty secured by the state, in which social rights, particularly over property, prevail over individual rights, signaling a collective desire for the welfare of a society as a whole. This is the single most important basis for desirable social development, for Rousseau, and is the problem of all political organization: how to secure the participation of every individual in the general will?

Whilst this notion of the general will was developed in a historical context very different to the current one, it undoubtedly plays an important symbolic function in contemporary political conflicts around notions of the 'general interest'. HSCS are seen by many social and political groups within the EU as embodying this ideal of the collective over the individual, of collective rights and responsibilities over individual rights and responsibilities championed by the Scottish Enlightenment that has been so influential in the development of Anglo-American society. Consequently, the current weakening of the public sector and of public services, as well as being considered a factor in increasing social inequality and poverty, is perceived as an unacceptable attack on a distinctive public domain, a domain which is 'both priceless and precarious – a gift of history, which is always at risk' (Marquand 2004, 2). This domain has been vigorously defended against encroachment by market logics virtually since its inception. It is instructive to contemplate the following words:

'Seen in historical perspective, the attempt to combine the equality of civil and political rights, which is of the essence of democracy, with the inequality of economic and social opportunities, which is of the essence of capitalism, is still in its first youth…It may well be the case that democracy and capitalism, which at moments in their youth were allies, cannot live together once both have come of age'.

Penned by Tawney and appearing in the 1938 edition of his book Equality (cited by Marquand 2004, 1), these words are a reminder of the long-standing struggle in many European nations to maintain spheres of human life that are governed by an ideology of social justice and solidarity (Barry 2005). Deeply problematic though both these notions are (see Gilbert 2002) they symbolize a dimension of life that cannot be totally subordinated to the requirements of calculability and predictability (the 'level playing fields' with regard to state subsidies in the Directive) or reduced to an economic function (growth and competitiveness) alone. The social meanings of HSCS are embedded in institutional forms that give expression to ideals of social justice and solidarity, and this is why the current incremental contraction of citizenship rights (Gilbert 2002, Marquand 2004) cannot easily be compensated for by an expansion of consumer rights.

5 Conclusion

Health and social services, along with income support, constitute the core of European welfare states. Their funding and delivery through public agencies has not only an organizational function but an important symbolic value, embodying ideas, or ideals, of political struggle: solidarity and collective responsibility. With regard to health and social care services, engaging critically with official policy discourses of consumerism, commodification and marketization encourages an examination of the political processes through which privatized purchasing relationships and commodity forms penetrate the institutions, regulations and practices of public service delivery. Here, much interest has focused on welfare governance – that is, the means by which social authority and social control are exercised through the organizations, associations, and professional and quasi-professional relationships that comprise HSCS. Within this framework, policy initiatives can

be defined not simply as technical issues affecting a particular area of social service delivery but as technologies of governance, that is, as instruments for steering societies in particular directions. The concern with the social engineering function of such initiatives directs attention also to the links between national and supra-national political dynamics – both via 'global' institutions (including the World Bank, IMF, WTO, and so on) and, importantly for the purposes of this paper, via the institutions of the European Union.

In analytical terms, two things are at stake in the engagement with consumerism and marketization. The first is the potential to grasp how different dynamics of social change move in and through the material processes and sites of HSCS organization and delivery. Here, a particular contribution is to provide a concept of 'markets' as embedded in political struggles and projects rather than as the spontaneously emerging sites of private exchanges portrayed in neo-liberal theory. This is explicitly recognized by the European Commission when it states that the concept of economic activity is 'an evolving concept' linked to political choices (European Commission 2006a, 15). The second is to demonstrate that the ideological tussle between the Anglophone (neo-liberal) and European (social democratic) versions of capitalist development is visible in the concrete details of emerging social policy programmes. Neo-liberalism is not an enemy attacking Europe from the 'outside' but a dimension of the struggle over which direction European social policy in general, and HSCS in particular, will take. That struggle continues within the European Union with attempts at resolution depending on finding a 'common ground' between the protagonists. This process continues with the publication in April 2006 of a Communication from the European Commission concerned specifically with Social services of general interest in the European Union (European Commission 2006) which, in defining social services and situating them within the 'modernisation' programme, reiterates exactly the same discourse as that contained in the Directive. Cameron and Palan (2004, 51-2) have argued that all formal political action depends upon establishing a discursive framework, a 'common ground', that can frame a particular initiative (see Penna 2005). In this case, the European Commission has presented a proposal in which the social dimension of the EU is expressed through an economistic model that is understood as the generic form, so that in discussing the development of the European Social Model with its provision of affordable, high-quality care the Commission must add that most of this is 'paid for from public funds, which are subject to the requirements of the Stability and Growth Pact' (European Commission, 2004b, para. 3.3). Thus, we see the production of a concept of HSCS that situate them within contradictory frameworks of citizenship and consumption, cohesion and competition, equality and inequality. This is a circle that is not easily squared to achieve the much sought after 'common ground'.

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