Social Justice in the European Union

A Social Democratic Ideal for an 'Ever Closer Union'

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Thesis Abstract:

In recent decades the European Union has moved from a multilateral treaty to a distinctive social, political, and economic order among European states. During the same period political philosophers have increasingly turned their attention to questions of justice beyond the state. But their discussions have largely focused on global justice, and have paid relatively little attention to the distinctive moral and political questions raised by the emergence of a new type of order among European states. This thesis fills this lacuna, by developing a conception of 'social democratic' or 'egalitarian' social justice for the specific institutional arrangements of the EU.

In Chapters one through three, I delineate a general conception of 'pluralist egalitarianism', the view that we have a variety of grounds for endorsing equality-inclined economic institutions domestically. *Direct* egalitarian arguments stress the internal requirements of institutional fairness to which basic economic institutions are subject. *Indirect* egalitarian arguments favour egalitarian economic outcomes based on concerns of social equality. I further differentiate between a *transnationalist* and an *internationalist* position. Direct transnationalist arguments stress the EU's similarity to domestic institutions and derive egalitarian economic requirements for the EU as a whole. Indirect transnationalists argue that EU citizens stand in a distinctive kind of relationship such that the value of social equality has purchase amongst them, and social equality requires a limitation on economic inequalities at the EU level. By contrast, *internationalists* insist on the continuing importance of national self-determination. However, they endorse more substantive economic institutions at the EU level to protect existing social democratic welfare state arrangements.

In chapter four to seven, I assess the extent to which each of these arguments can support a more egalitarian organisation of basic economic institutions at the EU level. Finally, I offer one practical proposal that would help the EU to realise the social democratic vision I have defended. This is the idea of an EU social minimum. I explain how such a social minimum would be conceived and implemented, and I demonstrate why transnationalists and internationalists should endorse such a policy.

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Yaşamak bir ağaç gibi tek ve hür
Ve bir orman gibi kardeşçesine
Bu hasret bizim!

Nâzim Hikmet

Introduction

1.1 The supranational dilemma

In a remarkable short essay, published on the eve of the Second World War, a scholar at the London School of Economics (LSE) ruminated on the possibilities and pitfalls of interstate federalism. In what must strike many today as almost prophetic foresight, he predicted that in such a "Union" where "goods, men, and money can move freely", one core feature would be that national governments face increasing difficulties in introducing and upholding measures that restrict free market processes. Moreover, such a federal interstate arrangement would, for reasons of economic efficiency, ultimately need to resort to a collective monetary system in which no state would be in a position to "pursue an independent monetary policy." Yet although the nature of such a federal arrangement would force nation states to relinquish large areas of their competency in economic matters, this reduction in state authority would probably not be met by a simple re-production of the relevant substantive policies – for example those policies in the economic sphere that protect particular industries against competition- at the new supranational level of public decision-making. Rhetorically, the author asks whether in such a union "the French peasant will be willing to pay more for his fertilizer to help the British chemical industry?" and goes on to suggest that:

> even where it is not simply a question of *regulating* (i.e., curbing) the progress of one group in order to protect another group from competition, the diversity of conditions and the different stages of economic development reached by the various parts of the federation will raise serious obstacles to federal legislation. Many forms of state interference, welcome in one stage of economic progress, are regarded in another as a great impediment. Even such legislation as the limitation of working hours or compulsory unemployment insurance, or the protection of amenities, will be viewed in a different light in poor and in rich regions and may in the former actually harm and rouse violent opposition from the kind of people who in the richer regions demand it and profit from it. Such

> legislation will, on the whole, have to be confined to the extent to which it can be applied locally without at the same time imposing any restrictions on mobility, such as a law of settlement.[1]

The name of the scholar with such foresight was Friedrich Hayek, and readers familiar with his broader economic and philosophical outlook will not be surprised to learn that Hayek wholeheartedly endorsed the developments he predicted: "That Englishmen or Frenchmen should entrust the safeguarding of their lives, liberty, and property – in short, the functions of the liberal state- to a suprastate organization is conceivable. But that they should be willing to give the government of a federation the power to regulate their economic life, to decide what they should produce and consume, seems neither probable nor desirable. Yet, at the same time, in a federation these powers could not be left to the national states; therefore, federation would appear to mean that neither government could have powers for socialist planning of economic life."[2]

More than half a century after Hayek wrote this, another imposing figure of the LSE, Brian Barry, commented on the first real-world attempt at the interstate federalism that Hayek had anticipated, the European Union (EU). His account of the empirical consequences of such an institutional order are remarkably similar to that offered by Hayek. Barry suggested that one major consequence of the EU has been that "it banned most of the increasingly sophisticated policy instruments by which individual states had controlled their economies since 1918, but left their replacement to a decision process that was (and is) heavily stacked against equivalent EU-wide intervention."[3] Barry concludes that it is an inherent aspect of a supranational arrangement like the EU that it "automatically inhibited *politics* from challenging *markets* successfully."[4]

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[1] [Hayek (1939 [1963], p.263]

[2] (Hayek 1939 [1963]: 266) P.266. The prophetic character of Hayek's article is also noted by (Streeck 2013: 141ff.) and (Morgan 2007: 73)

[3] (Barry 2004: 361-362)

[4] (Barry 2004: 361-362)

Of course, for Barry, a defender of a kind of liberalism dramatically different from the one advocated by Hayek, the "unbound market" of the EU was a reason to oppose rather than favour it. Indeed, he concludes by asking whether "those of us who accept the objectives of redistribution and a strong welfare state [should] be advocating the abolition of the EU right now?"[5] - and his intended response was unambiguously affirmative. In this assessment, Barry shows himself to be in good company, for a similar theme is struck by the philosopher responsible for the resurrection of the kind of liberal egalitarian position that Barry embraced, namely John Rawls. The one time that Rawls addressed the particular questions of social justice that arise in the EU (in an exchange of letters with Philippe van Parijs), his observation was that:

> Europeans should ask themselves -if I may hazard a suggestion- how far-reaching they want their union to be. It seems to me that much would be lost if the European Union became a federal union like the United States. Here there is a common language of political discourse and a ready willingness to move from one state to another. Isn't there a conflict between a large free and open market comprising all of Europe and the individual nation-states, each with its separate political and social institutions, historical memories, and forms and traditions of social policy? Surely these are of great value to the citizens of these countries and give meaning to their life. The large open market including all of Europe is the aim of the large banks and the capitalist business class whose main goal is simply larger profit. The idea of economic growth, onwards and upwards, with no specific end in sight, fits this class perfectly. If they speak about distribution, it is [al]most always in terms of trickle down. The long-term result of this -which we already have in the United States- is a civil society awash in a meaningless consumerism of some kind. I can't believe that that is what you want.[6]

[5] (Barry 2004: 366-367)

[6] (Rawls & Van Parijs 2003: 2)

I take Barry's and Rawls's concerns to be indicative of a worry many liberal egalitarian or social democratic political theorists have with regard to the EU: as a result of their closer social, political and economic integration, the societies of Europe might be moving away from a desirable political constellation of individual nation states with their own distinctive conceptions of egalitarian social justice. However, this assessment of the EU's impact on justice and the quality of political life amongst Europeans differs dramatically from the assessment offered by some continental European intellectuals and philosophers. Most notably, Jürgen Habermas has argued that the EU is the necessary first step towards the global federation of liberal democratic states envisaged by Kant, and that it is in fact the only possible road towards the realisation of full justice and legitimacy within and amongst states and persons globally.[7] But if the social democratic critics of the EU are right, then their observations point out a serious "supranational dilemma" for liberal egalitarian or social democratic defenders of the project of European integration: Either they need to scale down their ambitions for social justice and their broader vision of a good society, i.e. accept what Rawls called the 'trickle-down' model of distributive principles dictated by economic elites as well as the solidarity-, tradition-, memory- and community-erasing effects of a pan-European marketplace, or their concern for an egalitarian society must lead them to renounce proposals for further economic and political integration.

1.2 The main question

This thesis is concerned with developing an adequate political morality for the European Union. It tries to find convincing solutions to a number of philosophical problems raised by this highly interdependent and institutionally complex supranational political order between European states. Unprepared to relinquish either the vision of a just egalitarian society or an endorsement of the project of European unification, it presents and attempts to resolve the liberal egalitarian's "supranational dilemma" by proposing a philosophically principled, empirically grounded social democratic alternative of what the EU can and should become. To do this, I position the 'problem' of intra-European political order in the wider context of debates about domestic and

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[7] (Habermas 2011: 71)

global justice and legitimacy within political philosophy and normative as well as empirical studies of the EU.

My goal is to work out adequate institutional principles for social justice that pay attention to the unique institutional, social and economic facts that are prevalent across different states – or communities of solidarity- on the European continent. The position I present holds that in the light of our overarching egalitarian commitment ("the egalitarian ideal"), institutional principles need to differ in certain respects from those appropriate to the simpler nation state case to pay sufficient attention to these communities of solidarity and the egalitarian relations that these communities foster at the national level in the EU. Nonetheless, I insist that the EU's overall character today demands far-reaching and permanent distributive and democratically legitimated supranational institutions to prevent the entrenchment of distributive injustice and inegalitarian relations amongst EU citizens.[8] Only a different institutional blueprint will be able to achieve this.

The egalitarian ideal I advance conditions conceptions of justice and legitimacy, and the realisation of these values in turn requires significant changes – both substantive and procedural - to the fundamental supranational political architecture of the EU. The thesis thus proceeds from an abstract ideal to a conception of justice and legitimacy to concrete institutional proposals. The three main claims that this thesis seeks to establish are the following: First, that social equality between member state citizens and member states constitutes an attractive social ideal for an institution like the European Union. Second, that a distinctive understanding of institutional social justice (and political legitimacy) flows from such an egalitarian social ideal. Third, that those institutional proposals that will ensure the realisation of these values in a supranational political order are both morally desirable and practically feasible.[9]

[8] Throughout this thesis, the term 'EU citizens' is meant to capture the collective of all persons permanently living under the authority of EU institutions.

[9] I leave here open how the notion of practical feasibility is to be understood precisely – but I take it to be quite permissive, at the very least as permissible as Rawls' notion of what constitutes a 'realistic utopia'. (Rawls 1999b).

The major focus of this thesis is on the concern of social justice in the EU. I do address the topic of the adequate theory of legitimacy for the EU at various junctures of this thesis, but only to the extent that it bears on the formulation of principles of social justice. Thus, I do not propose a comprehensive account of the delicate institutional balance that democratic legitimacy for the EU will need to achieve. I do not mean to deny that legitimacy is of equal importance: my reasons for focusing on the issue of social justice are entirely pragmatic – stemming firstly from the necessarily limited scope of a doctoral thesis, and, secondly, from the fact that, relative to the wider discussion that the issue of the legitimacy of EU institutions has enjoyed in the empirical and philosophical literature (see chapter three), comparatively less effort has been put into reflecting on the requirements of substantive social justice for this supranational institutional order.

1.3 Terminology and Concepts

It is impossible to establish the claims of this thesis without saying much more about the meaning and theoretical status of social justice and legitimacy. Thus, I explain my usage of these terms and their relationship in the next sections. I then defend my terminological approach against a number of alternatives. Subsequently, I preview the main argument of subsequent chapters of this thesis, before closing this introduction with a discussion of one important methodological issue.

1.3.1 Justice and Social Justice

John Rawls, on the first page of *A Theory of Justice*, famously states that "justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise, laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."[10] The quote raises a number of important questions about the concept of justice: First, and most obviously, what are claims about justice claims *about*? Is justice a sort of comprehensive value or meta-value that includes and orders all other moral concerns? Second, what distinguishes justice in general from *social* justice? Third, what does it mean to be the 'first virtue' of social institutions? I do not, in the

[10] (Rawls 1999c: 3)

following, aim to define what justice really *is*. Instead, I intend to make plausible the view that we should not conceive of justice as a comprehensive meta-value that includes all our concerns about a political order, but instead that we must distinguish between a narrow (distributive) account of social justice and an account of legitimacy, and that we need a social ideal to guide our thinking on how to integrate these values when we concern ourselves with questions of actual institutional design.

Justice in general. In everyday discussions, we tend to use the concept of justice to pass judgement on a wide array of situations: We complain that our boss is acting *unjustly* when he denies us a day off work to visit a sick relative; we feel that sentencing an offender to imprisonment for a minor offense is an *unjust* punishment and that the judge could have judged more *justly*; or we believe that material inequality, for example the large gap between rich and poor in our own society or the more drastic gap between our society as a whole and the least developed countries in the developing world is an *injustice* (though many would also claim that severe poverty of the kind we find in such places is unjust *as such*). These few examples already show that the usage of the language of justice is extremely variegated. From a purely formal perspective, we might say that the concept of justice is used both deontically and axiologically, and that it is used (at least) to evaluate the moral character of individuals and their actions, social arrangements or institutions and the absolute levels of holdings and relative distribution of benefits between individuals more generally.

Can general conceptual analysis tell us anything more concrete about how the concept of justice is to be understood? It appears difficult to do so because 'justice' is often described as the principal moral virtue that includes all moral concerns that we have in thinking about how we should live with others. We often use the concept of justice in this sense when we conclude that 'the just thing to do' is what comes out of weighing all relevant considerations and values that bear on a moral issue, or when we affirm that a certain kind of distribution simply *is* the just state of affairs. Justice in this sense would be close to our 'all-things-considered' moral judgment about how to act or what counts as politically valuable. But this understanding would render the claim that justice is the 'first virtue' not very interesting, for it would simply amount to the claim that the most

important virtue of social institutions is to be as they all things considered ought to be (or, perhaps, that a just institution is that institution that we should, all things considered, choose over any other institution as such).

Philosophers have therefore attempted to distinguish questions of justice from the broader realm of morality or, indeed, practical reason. If morality answers *all* questions about how we individually or collectively ought to live, then perhaps justice only concerns an important subset thereof. But once we attempt to define the content of justice more precisely, we encounter immediate controversies: One controversy concerns the value(s) whose evaluation goes into judgments of justice. Possible contenders here are utility or moral desert or need or equality. Stipulating one or several of these as the 'ingredients' of justice we are already head-over-heels in debates about particular conceptions of justice. Second: Thinking about justice in terms of its constituent values also reveals a deeper conceptual disagreement. This relates to the kind of value that justice is, or what we might call its 'internal structure'. Do judgments of justice express one single deeper value, or is justice internally complex? Take the view that justice is realised when an act or state of affairs expresses a fundamental principle of equality. This would be a 'simple' or 'unitary' account of justice, in which a single principle of equality is the just-rendering characteristic.[11] An alternative understanding is to conceive of justice as a 'complex' value, in which case one maintains that more than one value goes into our evaluation of whether or not an action or state of affairs is just.

There is a deep conceptual divide between these two understandings and one is tempted to believe that two individuals debating justice with a 'unitary' and a 'complex' understanding respectively will often be speaking past each other. The reason for this is that those who believe justice to be a unitary value generally employ the concept in a more axiological sense and do not take their judgements about justice to necessarily be practical judgements about what we should do: if justice is a 'pure' value and we believe in at least some form of value pluralism, then the verdict that 'X is just' need not tell us

[11] An understanding of justice along these lines is most clearly expressed in: (Cohen, G. A. 2008).

what we should do. If, by contrast, justice is a complex value that integrates and orders (many of) our most fundamental moral judgements, then we are, *ceteris paribus*, much more willing to accept that judgements about justice are by their very nature action-guiding.[12]

Although the discussion so far was surely inadequate as an exposition of all dimensions of the concept of justice, I think that three key points have emerged: First, that it seems unhelpful to define justice as synonymous with morality. Second, that accounts of what justice is are either too commonplace ('giving each their due') to be interesting or too controversial to teach us anything about the concept. (As Jeremy Waldron says: "argumentation about justice seems to get going too quickly to leave the sort of breathing space that we need in order to say something about the concept of justice as opposed to rival conceptions of it."[13]). This feature of justice reveals the danger that we are hopelessly speaking past each other in discussion of what justice requires unless we specify which conceptions we have in mind, and it gives us reasons to opt for a less expansive rather than more expansive conception to avoid such confusion. Third, that despite this danger of confusion, we can agree that the idea of a just distribution is a core aspect of the concept of justice, i.e. justice is in many central cases intuitively understood to be concerned with distributing benefits and burdens in accordance with people's claims.

Social Justice. Rawls's concern, in the passage quoted at the beginning, was not with justice in the general sense in which people use it, but *social* justice. When we address the topic of social justice, we abstract from the justice or injustice of individual acts or the assessment of more limited allocative situations and attempt to establish the rules according to which *society as a whole* would need to be organised in order to conform to justice. Although the adjective *social* may suggest that the subject matter of social justice is the justice-evaluation of political or non-political *societies*, I take social justice

[12] See e.g. G.A. Cohen's remark that his major concern is "to know what justice is whatever I or anyone else may think is the right form and amount of the contribution that justice should make to political and social practice." (Cohen, G. A. 2008: 306). For a critical discussion, see (Quong 2010) (Miller 2013).
[13] (Waldron 2003a: 270)

to concern the justice-evaluation of relatively comprehensive political orders, which includes, but is not necessarily limited to, the set of institutions that coincide with (political) society in a state. Most importantly, social justice requires that the fundamental social institutions work together in such a way that they realise justice. Rawls describes as the basic structure of society "the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time."[14] He mentions the political constitution, the judiciary, the family, as well as the legally recognised forms of property and the structure of the economy as basic institutions that together make up the basic structure.[15]

Although a focus on social justice limits the object of inquiry to *society*, it does not change the nature of the kind of distributive (outcome) evaluation that justice constitutes. As Rawls argues: "a conception of justice, then, is to be regarded as providing in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed."[16] Thus, social justice as I understand it here following Rawls, is the application of a broad understanding of distributive justice to the context of a political order. The understanding of what counts as distributive justice must be *broad* because the distributive aspects that result from political orders are so variegated: the basic structure not only stipulates via its legal system the rules that determine legitimate holding in socio-economic goods and how these are to be distributed, but crucially, it also fixes the distribution of basic rights and duties and rules concerning the achievement of certain desirable positions in public life. A theory of social justice then, is a detailed account of the institutional procedures and outcomes in terms of the distribution of justice-relevant goods that a political order brings about. Brian Barry suggests a similar understanding when he notes that "when we ask about the justice of an institution we are inquiring into the way in which it distributes benefits and burdens. The currency of social or distributive justice is one of rights and

[14] (Rawls 2001: 10)
[15] (Rawls 2001: 10)
[16] (Rawls 1999c: 8)

disabilities, privileges and disadvantages, equal or unequal opportunities (...), wealth (which is a right to control the disposition of certain resources) and poverty."[17]

1.3.2 Legitimacy

Some might worry that the understanding of social justice as *distributive* justice to some extent privileges outcomes, and conceives of social justice in too narrow terms. These critics hold that properly understood, the 'comprehensive' domain of social justice includes, aside from the issues that can be formulated in broadly distributive outcome-related terms, a second evaluative aspect, namely that of 'political justice'. Political justice concerns the morality of how power is wielded in society, which includes both the constitutional provisions for the exercise of political power (by whom and through what mechanisms are political institutions designed and shaped?) and the informal allocation of social power in non-political relations more broadly (are certain groups in society systematically dominated by others?). If we accept this comprehensive account, then contrary to what I have suggested, the relevant terminology of social justice is this: Political justice concerns the formal and informal procedures concerning the wielding of power whereas distributive justice concerns the just allocation of socio-economic goods and basic rights and opportunities in society, and hence distributive outcome-oriented and political procedural justice *together* constitute the domain of comprehensive social justice. Contrary to this terminology, I want to keep distinct from each other in this thesis the issue of the ends that a political order must bring about on the one hand and our normative assessment of procedures for the exercise of political power that is required to bring about those ends on the other. This latter form of assessment, I will refer to as legitimacy.

What then are reasons to endorse either of these terminological distinctions, i.e. to talk about 'comprehensive' social justice that entails assessment of procedures for the exercise of political power or as 'narrow' social justice that does not include the issue of legitimacy as I have defined it? I share the concern for questions of social power that can perhaps not easily be framed in terms of distributions of some good, but

[17] (Barry 1989: 355)

nonetheless favour the more narrow understanding according to which we should conceive of social justice in more institutional distributive-outcome-related terms. If we unpack the complaint against distributive social justice, I think we can show that some concerns about 'narrowness' can be alleviated. First, it is sometimes assumed that distributive social justice must be based on a simplistic and static understanding of one distributor dividing a fixed bundle of goods amongst some recipients. It would surely be a mistake to interpret social justice in this manner, and if we did, the complaint just mentioned would be warranted. But the notion of distributive social justice favoured here takes it as a given that we are primarily concerned with designing institutions and practices that can *robustly* guarantee the conditions that ensure just distributions. Although we focus in the first instance on the output of social institutions, the conception of justice defended here seeks to specify how just distributions can be maintained over time and across changing circumstances.

A second complaint would be that distributive justice conceives too narrowly of the relevant goods to be distributed. Against this, it is important to see that we can conceive of the relevant distribuendum in more or less expansive ways, and only some of these understandings render social justice conceptually too narrow. If we think of 'distribution' as only concerned with income and wealth, then the worry might be justified. But if we accept a sufficiently broad understanding of social goods (the benefits and burdens) that are up for distribution in society, including, for example, basic political liberties -*except* those concerning the wielding of political power over others- as well as the good of having the opportunity to achieve certain social positions, then it does not seem too restrictive to frame those issues ordinarily addressed under the heading of social justice along distributive lines.[18] Finally, it is important to stress that although social justice was specified as concerned *primarily* with distributive outcomes, there might be certain requirements of fair procedure that appear to be internal to our thinking about social justice.[19]

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[18] (Miller 1999: 14-17).

[19] To defend these claims, reference is often made to criminal trials, where justice requires certain procedures independent of whether or not these contribute to just outcomes. A more controversial point, but one that I do defend, is to classify concerns of fair equality of opportunity as an essential aspect of a just society. See e.g.

In spite of this last point, I believe that there are strong reasons why we should think of social justice as essentially outcome-oriented and distinct from the most important procedural concerns we have about political orders. For one, including the exercise of political power in social justice to some extent complicates our thinking about justice by burdening it with too much normative content. This, I fear, amounts to falling back to the problem that justice becomes too close to our all-things-considered vision of a good society discussed earlier. I propose therefore that we add to our conceptual toolbox the assessment of political orders in terms of legitimacy, which is distinct from their assessment in terms of justice. Following my terminology, judgments about social justice are judgments about whether or not (and to what degree) basic social institutions distribute advantages and disadvantages in a morally acceptable way, whereas judgments about legitimacy are judgments about whether or not (and to what degree) the procedures through which decisions concerning the scope and shape of social institutions are made are acceptable. Put slightly differently, assessments of social justice are assessments about the distribution of goods that a political order brings about, whereas assessments of legitimacy are assessments of how the state brings these distributions about.[20]

There are a number of different substantive accounts of what makes it the case that a political order is legitimate and what kinds of permissions legitimacy bestows on political agents. For the moment however, I want to introduce merely the ideas that, first, social justice and legitimacy are two distinctive concerns we might have about a political order, and second, that these two distinctive concerns might have different consequences for the moral status that a political order enjoys towards its subjects or third parties. Keeping the issues of justice and legitimacy distinct in the way described is especially important when we think about the actual political design of a supranational political order like the EU, where questions of legitimacy are particularly complex insofar as we must evaluate not merely the kind of procedure employed in making

discussion in (Ceva 2012; Miller 1999, chapter 5). Also see the discussion of egalitarian fair procedures in (Scanlon 2005).

[20] This account is similar to Philip Pettit's (Pettit 2012a: 60; 2012b chapter 3). Of course, discussions of legitimacy also concern the prior question whether the creation of political authority can be justified in the first place.

political decisions for a given set of persons (as is ordinarily assumed in the case of the nation state), but must also grapple with the question of which kinds of political decisions ought to be made at what layer of political authority.

1.4 Structure of this thesis

After briefly discussing two questions of methodology in the remainder of this introduction, the first substantive chapter (chapter two) moves to the task of defining and defending a particular conception of domestic social justice and an ideal of social equality. The conception of social justice I advocate is a form of 'pluralist egalitarianism'. Focusing specifically on economic justice, I argue that there are two kinds of reasons that speak in favour of substantive economic justice, by which I mean a conception that includes an egalitarian (or equality-inclined) element for the distribution of primary social goods as well as a principle of fair equality of opportunity. Firstly, there are *direct* arguments for substantive economic justice stemming from a concern with the fairness of basic social institutions. Secondly, there are *indirect* arguments for such principles, by which I mean reasons that stem from a commitment to social equality, understood as a free-standing independent moral ideal. To motivate this independent moral ideal of social equality, I explain how a large number of the different types of human relationships have a particular value when conducted as relationships of equals. Political relationships, that is, relationships amongst those living under a political order, are of such a type: they are especially valuable when they are of an egalitarian character. Indirect arguments are those that demonstrate the need for substantive egalitarian outcomes in the economic sphere by an appeal to the value of social equality.

Before I assess in detail whether these direct and indirect aspects of pluralist egalitarianism have force in relation to the EU, chapter three engages the existing normative EU literature, where many theorists tacitly or explicitly endorse a position according to which the EU is an inadequate site for the development of institutional principles of social justice. Thus, EU scholars focus on the concept of legitimacy and much of the debate turns on whether there is a democratic deficit and whether or not

'input' or 'output' legitimacy can render the EU morally ideal. To make sense of this debate, the chapter first explains the various notions of legitimacy and legitimation at play in these debates, and then goes on to show that none of the theorists in this debate have successfully shown that theorising standards of social justice at the EU level is unnecessary. Thus, chapter three establishes that a first set of arguments against social justice at the EU level fails.

Having rejected any outright inapplicability of theorising social justice for the EU, chapter four proceeds to assess which of the direct and indirect arguments for substantive economic justice have purchase in the EU case. In order to do so systematically, I further distinguish between *transnational* and *internationalist* arguments at the EU level. Transnational arguments take the current EU as it is and seek to establish that an institutional order of this kind generates interpersonal obligations of justice in the same way as the basic institutions of domestic society do. Again, there are direct transnational arguments, which argue that concerns of fair reciprocity or fiduciary obligations on the part of the EU as an institutional agent give rise to justified demands of economic equality and equality of opportunity, and there are indirect transnational arguments which favour substantive principles in order to uphold and protect the value of social equality amongst EU citizens. By contrast, internationalist arguments maintain that EU justice properly conceived is justice amongst collective agents representing individual political communities, and that substantive supranational institutions are required to protect domestic social justice within each individual state. Chapter four concludes that at least some of the arguments for substantive economic justice in domestic settings can be applied to the interpersonal relations at the EU level, i.e. some of the direct transnational arguments have purchase in the EU case.

	Direct	Indirect
transnational	EU basic structure requires limiting EU-wide economic inequality because it owes EU citizens equal treatment	EU basic structure threatens EU-wide social equality which requires limiting of EU-wide economic inequality
internationalist	EU basic structure requires limiting EU-wide economic inequality to uphold domestic social justice	EU basic structure requires limiting EU-wide economic inequality because domestic social equality is undermined

Figure 1: Four categories of arguments for extending principles of economic justice to the EU

Chapter five defends the conclusion of the previous chapter against a position that would, if sound, establish that concerns with substantive justice are inapplicable to institutions beyond the state. This *statist* position seeks to block my direct transnational case for social justice at the EU level by arguing that egalitarian economic (or equality-inclined) principles are not at base justified by a concern for how people can live in a political order characterized by the fairness of cooperation or the existence of egalitarian relationships, but instead, that such obligations are obligations that a particular kind of political authority -a sovereign state- owes its subjects in virtue of certain facts about the way in which it enforces its directives: limiting economic inequality is a requirement only where a comprehensive political order is non-voluntarily or coercively enforced. Since the EU does not at present coercively enforce its directives against subjects, the implication would be that no principles concerning economic outcomes would be adequate for it. I defend my account of pluralist egalitarianism against this position and show that neither claims about coercive enforcement nor more general assumptions about non-voluntariness are necessary conditions for principles of egalitarian social justice to have purchase. Moreover, I show that the most plausible core claim of this position, namely that agents of public power owe equal moral concern to those over whom they claim authority, does in fact *support* the view that EU institutions do create such obligations.

Chapter six suggests that there are also indirect transnational arguments that support this conclusion, i.e. there are arguments stemming from a concern with social equality amongst EU citizens that support redistributive principles and a limitation of economic

inequality at the EU level. Analogous to indirect arguments for substantive economic justice at the domestic level, indirect transnational arguments insist that social equality amongst EU citizens is a valuable ideal, and moreover, that the realisation of such an ideal is incompatible with a number of economic inequalities because such inequalities inevitably hinder the development of social equality by creating hierarchies of basic standing, power and esteem. The controversial moral premise that this chapter defends is that the ideal of social equality can be extended in important ways beyond the confines of individual societies.

Chapter seven turns to the internationalist case for supranational EU institutions. The argument here is the following: Faced with irreversible conditions of complex interdependence, even those who in the first instance believe in the realisation of an egalitarian conception of social justice *domestically* (i.e. those who are somewhat sceptical about redistribution across borders because they cherish the value of self-determination for political communities) have strong reasons to move to supranational institutions because such institutions provide the best promise to safeguard an egalitarian conception of domestic social justice and a degree of self-determination for each political community. To vindicate this claim, I assess in some depth two empirical phenomena that under currently prevailing conditions of complex interdependence threaten the realisation of domestic social justice and self-determination, namely tax competition and labour standard deterioration. The conclusion of my empirical discussion is that only supranational institutions hold the promise to realise domestic social justice, self-determination and sovereign equality amongst states, and that sometimes these institutions best protect domestic justice in each state by engaging in cross-national distribution.

The final substantive chapter (chapter eight) of this thesis provides an institutional proposal that recognises both the transnational and the internationalist outlook. I show how an 'EU social minimum' could bring into reflective equilibrium the normative commitments of both the transnational and the internationalist position. Such a European social minimum would go some way towards ensuring fair reciprocity and equal treatment for all EU citizens, and could help to advance social equality amongst

them. At the same time, it would not significantly inhibit the realisation of important elements of a political community's self-determination cherished by defenders of internationalism, because it would be compatible with more demanding and more egalitarian welfare state arrangements within each EU member state. Since my aim in this final chapter is to make a concrete and fairly realistic institutional proposal that is compatible with the various normative reasons (direct/indirect as well as transnational / internationalist) that speak in favour of supranational European authority and substantive justice, I do not defend the idea of a social minimum from first principle. Rather, I show how it suggests itself as one realistic proposal that egalitarians and social democrats of various colours can and should endorse in the specific context of the EU.

The conclusion of this thesis summarises the argument and makes some suggestions regarding the requirements of further research on social justice and legitimacy for the specific case of the EU.

1.5 Methodological considerations: The role of the EU in theorising

Before closing this introduction, I want to briefly address one methodological point that the project of developing normative principles for the EU raises. This is the question that derives straightforwardly from the specific project of this thesis: what does it mean for a normative account to be *about* a particular institution? To answer this question, it is explained where this thesis falls on the spectrum of what in the literature on global justice has been called practice-dependent or contextualist theorising on the one hand, and practice-independent theorising on the other.[21] The purpose of this thesis is to describe a conception of justice and to work out its implications for a particular institutional context, namely the EU. But there is a question about how to understand the connection between, on the one hand, the conception of social justice that I propose and the actually existing institution for which I aim to propose reform in light

[21] Beyond this point of particular relevance for the subject of this thesis, I do not engage wider debates about methodology in political philosophy. In general, this thesis relies on the method of reflective equilibrium, which, I take it, underpins most work in the contemporary philosophical literature. Within the terminology of reflective equilibrium, this thesis is an exercise of a 'narrow reflective equilibrium', i.e. I do not contrast the conception of social justice developed here with radically diverging philosophical proposals. (Rawls 1999c: §9; 2001: §10, pp.29ff). (Daniels 1996, 2011)

of this conception: What does it mean to work out a conception of this political value *for* an institution? In order to clarify this issue and the methodological stance taken in this thesis, I begin by contrasting two different ways in which the EU might appear in normative theorising, namely in *theory construction* and *theory application*. Between these two, this thesis is first and foremost an exercise in theory application.

1.5.2 Theory construction and theory application

There are two stages at which discussions of the EU can be connected to political philosophy, which I will call respectively the *theory construction* and the *theory application* stage. The task of theory construction is to clarify and define the various constituent parts of a moral value as well as the conditions of its applicability to different aspects of the world. If we take for example justice as the value to theorize, then theory construction requires us to abstractly define the value of justice, which amounts at least to specifying (a) those features that realise justice between a set of persons and (b) the conditions under which justice thus conceived matters between persons. Important questions concerning the former will be e.g. the questions of content, currency and site of justice familiar from post-Rawlsian discussions amongst egalitarian theorists and between them and their critics. The latter question of when and between whom justice matters (often called the issue of justice's *scope*) has been the subject of extensive debates in the literature on global justice.[22] If we focus for the moment on the issue of justice's scope, then the relevant question for theory construction is the abstract and generalizable question "To what does social justice apply?" And in relation to this question, our judgment about whether or not social justice applies to the EU is a 'data point' in developing a general answer about social justice in reflective equilibrium.

Why might the EU be a particularly interesting data point in theory construction for justice's scope? To answer this, a very brief sketch of the present debate concerning justice's scope in the global justice literature and some understanding of its terminology is helpful: John Rawls' *A Theory of Justice* initially fixed the question of justice's scope by simply stating that its domain of application was "society conceived for the time

[22] For influential discussions of the latter see e.g. (Abizadeh 2007) and the summary in (Caney 2008).

being as a closed system isolated from other societies."[23] But more recently, cosmopolitan theorists have put pressure on the assumption that the boundaries of the nation state can act as a natural and justifiable delineator for justice's scope. Such theorists claim that the scope of justice is today global. More precisely, cosmopolitans answer both of the following theory construction questions in the affirmative: Are there principles of justice at the level above the state? Do the same principles of justice that apply within states apply across states? The upshot of their affirmative responses to these questions is that justice today is global.

Other philosophers -variously called anti-cosmopolitans or social liberals- have objected to this quite dramatic shift to what until recently were thought to be the conditions of justice's application and have sought in response to develop a number of arguments to restrict the scope of justice to the nation state that are compatible with the core commitments of liberal egalitarianism about justice exemplified by Rawls' work. Generally speaking, their strategy has been to deny (at least) the second question above by first isolating one or several morally relevant features of the contemporary nation state and to demonstrate that this particular (set of) feature(s) is necessary and sufficient to trigger requirements of justice and then, in a second step, to establish that this morally relevant feature is not currently present at the global level. The most prominent morally relevant features of the liberal nation state that social liberals have described can be categorized into those cultural features that pick out the ideal of 'the (liberal) nation' and those aimed at 'the (liberal) state'. Amongst the former, the chief argument is that only a sufficiently strong form of common identity brings requirements of justice into play and such common identity in contemporary societies requires something akin to a coherent national culture.[24] Amongst those social liberals focusing on normatively relevant aspects of the *state*, two distinct and competing explanations have dominated the recent debate. The first argues that the state is morally unique because it coercively enforces a comprehensive set of legal norms and social institutions that systematically shape the lives of those being subject to it. Though *prima facie* morally problematic

[23] (Rawls 1999c: 7). Of course, Rawls did develop a theory of justice beyond the confines of the state at a later stage.
[24] (Miller 2009b: 302-304)

(because coercion always infringes autonomy), the coercive institutional scheme of the state can be morally redeemed just in case that its institutions conform to principles of justice.[25] The second account focuses not on *how* the state achieves its aims, but *what* it achieves, to wit, that it facilitates the joint, cooperative provision of a core set of important collective goods to those under its authority. Where the state realizes this aim, those benefiting owe other participants in the cooperative scheme a fair return, and it is principles of justice that specify what counts as such a return.[26]

Cosmopolitans, by contrast, have attempted to rebut the social liberals' conclusion by one of these two strategies: Either they have sought to show that as a matter of theory construction, the particular (set of) moral facts about the nation state picked out by the social liberal is not a necessary condition for justice to have purchase. Call this the *normative strategy*. Following the normative strategy, many cosmopolitans have argued that less demanding empirical conditions determine whether justice applies, for example, that it is sufficient that the decisions of one (set of) person(s) has significant foreseeable consequences for others, and once we combine *this* criterion with any plausible description of contemporary globalization, we must accept that justice's scope is global.[27] Alternatively, cosmopolitans have granted the social liberal's normative premises and attempted to demonstrate on empirical grounds that the relevant moral fact does not obtain solely at the level of the nation state but also globally. Call this the *continuum strategy*.[28]

The way in which I have just portrayed the defining features of cosmopolitanism about justice and the social liberal strategy should make it clear that logically, not all social liberal theorists must be statist, i.e. claiming that justice applies only amongst citizens of a nation state. Statism only follows directly from a much stronger denial of the first cosmopolitan question, namely whether justice applies between states at all. Although

[25] (Blake 2001)

[26] (Sangiovanni 2007)

[27] A clearly more extreme view even is that no conditions at all are necessary since justice's scope is non-relational and therefore by definition also global.

[28] (Armstrong 2009: 298). The continuum stategy is thus not an exercise in theory construction to rebut the social liberal position, but an exercise in theory application (see end of this section).

most social liberals start from the ideal of a just state, some have pledged allegiance to *internationalism*, which is the view that there can be, and to some extent are, requirements of justice beyond the nation state because some institutions beyond the state display some relevantly similar conditions (=affirmation of the first question), but that these requirements nonetheless differ from those requirements of egalitarian justice that citizens of contemporary nation states owe one another (=denial of the second cosmopolitan question).

Coming back to the role that the EU might play in the task of theory construction, we see that the institutional system in which all the social liberals' arguments for restricting the scope of justice coincide is the ideal-type of a contemporary nation state. Now when we contrast the nation state with the EU, we see that the latter displays some features that approximate aspects of the 'ideal-type' nation state that social liberals conjure to rebut cosmopolitanism, whilst other features of the EU make it appear more akin to the institutional and sociological landscape we find in international *cum* global politics: supranational EU institutions significantly differ from state institutions, and that may be instructive for evaluating the necessary strength or intensity of a particular normative triggering feature that we have identified. First, and perhaps most obviously, the EU lacks a common national identity amongst its participants: there is no homogenous national culture and, as we might gather from the recent events in the context of the European sovereign debt crisis, EU-wide bonds of solidarity are quite rudimentary. Moving on to the state-category of social liberal arguments, the EU differs manifestly from the contemporary nation state in that it cannot be described as a central authority that coercively enforces a comprehensive set of legal norms: the EU's scope of authoritative decision making is limited, and the degree to which the EU as an institution coercively enforces rules is practically non-existent. The same is true for the provision of the previously mentioned central class of collective goods, for many of these continue to be provided in some respect at the nation state level, evidenced for

example by the comparatively small level of institutional expenditure of which the EU disposes relative to EU-GDP.[29]

However, and this indicates a striking difference to nearly all global institutions, the EU's independent administrative agents (the Commission, the European Court of Justice, the Parliament) do have something like ultimate control over some issues, and it seems difficult not to categorize some EU decisions as coercive. Moreover, the EU has strong, if perhaps not ultimate, control over many policy issues that deeply affect the distribution of advantage from social cooperation not only between, but also *within* its member states. These latter are issues that any theorists of egalitarian distributive justice must care deeply about. A further difference that sets the EU apart from the context of global politics is the fact that the EU is arguably the only supranational institution that has established direct political links with the citizens of its member states: member state citizens have, *as EU citizens*, some democratic say in some areas of EU decision-making through direct democratic elections for the European Parliament. Moreover, they have to some extent direct access to EU institutions, e.g. through so-called 'direct access' litigation at the European Court of Justice or the European Ombudsman.

How might all these facts about the EU be relevant in the task of general theory construction in reflective equilibrium? Two points are significant here: First, some theorists have argued that global justice is not really social justice for a political order different from the one that has been theorized since Rawls' *Theory of Justice*, but that global justice is an altogether different *concept* compared to the idea of social justice that was characterised in the introduction. Thus, David Miller argues that "social justice and global justice are different *concepts*, and in order to understand global justice correctly, we need to focus attention on the nature of relationships between people across the globe who at the same time belong to different national communities."[30] The EU as a political order falling somewhere between the domestic and the global – in the sense of sharing certain features common to each- makes it harder to draw a clear-cut

[29] Some striking comparisons between a (relatively un-egalitarian) nation state like the US and the EU are presented in (Sangiovanni 2013: 20).
[30] (Miller 2013: 174 [my emphasis])

distinction between global and social justice. Second, intuitive judgments about whether the EU should be governed by certain principles of justice can serve to reject or to refine particular conceptions of justice's scope.

Theory application. This last point makes the EU's role in theory-constructing different from the second way in which we might link normative theorising to it, namely in theory application: When we engage in this task, we do not (or not predominantly) consider the case of the EU as a relevant *input* to our theorizing about how we should define a concept or what constitutes a principle's moral scope, but as a concrete application for which our abstract and generalizable account of that principle aims to tell us what should be done. In this case, we ask, "What are the correct normative principles for the EU?" and we try to respond to this question by applying our considered moral view of the relevant moral value to our conception of what the EU actually is or could be. Theory application is by necessity a two-step exercise, in that it requires us to marry our conception of particular moral values to an empirical assessment of how the existing conditions must be reshaped to realistically bring about these values. This thesis is, first and foremost, an exercise in *theory application.* I take a conception of certain moral and political values that I consider persuasive and aim to show why they are attractive in the case at hand and what we must do politically and institutionally to apply them faithfully.

1.5.3 Contextualism and practice-dependence

One important subject of disagreement between different theorists concerns the relationship between theory construction and theory application. What has come to be called the contextualist or practice-dependent position argues that any stark distinction between the activity of theory construction and theory application is an artificially contrived one because the abstract task of theory construction is necessarily incomplete unless and until we have specified the social form F in which it is to be applied. Thus, Andrea Sangiovanni, who defends a kind of practice-dependence argues that "the content, scope, and justification of a conception of justice depends on the structure and

form of the practices that the conception is intended to govern."[31] And David Miller, a defender of contextualism about justice, states that: "[T]he kind of theory that we should be looking for is one that connects principles to contexts in a systematic way. Rather than laying out principles P1...Pn as constituting justice in all circumstances, it should take the form 'In C1, P1, in C2, P2, ... In Cn, Pn'."[32] The point then is that normative principles P –an aspect of *theory construction*- fundamentally vary in the light of the particular social form or practice with which we are concerned at the level of *theory application*.

Two sets of clarifications are important before we can better understand the practice-dependent thesis and its implications for the project of this thesis. First: What counts as a social form or practice and how can we differentiate between different social forms? Second: How does the practice-dependent theorist move from having identified a social form to proposing a normative principle? Rawls defined practices as "any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure."[33] Practices relevant for justice are those that structure the distribution of scarce resources and socio-economic goods. How can we distinguish from one another different social forms or practices? When we try to identify and differentiate practices into institutional systems and to determine their relevance for normative principles, we must engage in *interpretation*: The first element of interpretation attempts to identify the 'point and purpose' of the relevant social form.[34] What practice-dependent theorists claim we do when ascertaining the point and purpose of an institution is, following Dworkin, that we "impose purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong."[35] At least one thing required by the interpreter is that he must assume the perspective of participants in this practice or institutional system to determine their reasons for upholding the practice and their self-

[31] (Sangiovanni 2008: 138)
[32] (Miller 2013: 43)
[33] (Rawls 1999a: 190), quoted in: (Sangiovanni 2008: 138 fn2)
[34] (Sangiovanni 2008: 148)
[35] (Dworkin 1986: 52)

understanding within it. In doing so, the interpreter seeks to convey a 'coherent whole' of the various independent parts and interactions that make up the social form.

Once we have developed a coherent interpretation of a social form, we attempt to formulate normative principles that render the social form ideal. The practice-dependence thesis does not claim that all differences in structure and self-understanding amongst participants require different principles. One subset of practice-dependent theorists holds that differences in cultural conventions and social meaning establish variance in the principles that apply, whilst a different subset, called institutionalist, holds that only social and political institutions "fundamentally alter the relations in which people stand, and hence the first principles of justice that are appropriate for them."[36] The institutional variant of practice-dependence does not take the self-understanding of participants in the practice to be ultimately decisive for the kind of principle of justice that it proposes.[37] Rather, the institutional context merely identifies ("conditions") the point of purpose and general character of the social form, to which the institutionalist then applies a distinctive normative criterion. For example, this normative criterion is the 'mediating principle' that justice is a requirement of reciprocity in the provision of collective goods in Sangiovanni's version. Mediating principles, according to Sangiovanni, are not themselves practice-dependent but derives from first order moral argument, and as a result this version of institutionalist practice-dependence appears less conditioned by the social meaning attached by participants to the relevant social form, at least concerning the *content* of normative principles because such content only results from the interpretation of what the mediating principles of reciprocity demands.[38]

[36] (Sangiovanni 2008: 138). To be consistent with his earlier definition, Sangiovanni must here imply that 'first principles of justice' encompass normative principles as well as methodological principles of justification.
[37] (Sangiovanni 2008: 147)
[38] (Sangiovanni 2008: 146-147). It is not immediately obvious how the practice-*in*dependence of a mediating principle of reciprocity is to be reconciled with the claim that not merely principles but also the relevant methods of justification may vary in the light of social forms.

1.5.4 Why this thesis is not practice-dependent

At this point, one may wonder what taking this standpoint would entail for this thesis. Given that the EU has the quite unique features described, the practice-dependent theorists will likely subscribe to the idea that the EU constitutes a distinctive social form for which normative principles (and perhaps their method of justification) differ in some fundamental sense from those familiar in the context of social justice in domestic society. More fundamentally even, it might be the case that for certain forms of practice-dependence, the concept of 'EU justice' is understood to be radically separate from either domestic justice or global justice: the EU as a unique social form would generate its own quite unique first order principles and method of justification as well as institutional requirements.

At first sight, it may seem logical to see the project of this thesis as sympathetic to -or labouring in the spirit of - practice-dependence. After all, it was said earlier that the goal of this thesis is to defend a set of principles *for* the EU as a particular institution, and it was claimed at the beginning that the institutional principles proposed will differ at least in some respect from those applicable in the case of the nation state. Yet contrary to this initial assumption, I do not think that contextualism or practice-dependence needs to follow from this project: applying core values of political morality to an institution is clearly not per se tantamount to arguing that these values depend on the context of their application, or that the justification for applying them derives irreducibly from context. My argument against endorsing the practice-dependent claim comes in two steps: First, I show that what renders the practice-dependent approach unique is the fact that sociological facts are permitted to determine higher-level normative principles rather than merely institutional requirements. Second, I show that it is this feature that renders practice-dependent views unique that makes them also unattractive.

Practice-dependence requires investigating two kinds of elements to get off the ground: First, features that permit one to distinguish social forms from one another. Call these *distinguishing claims*. Second, features that help us to determine the moral values applicable to the social form, and principles necessary for the realisation of these values.

Call these *content-generating claims*. Interpretation is the task of the normative theorist who wishes to respond adequately to these features and thereby to work out the different social forms and the normative principles required for each of these. It is sometimes argued that one advantage of practice-dependence is that approaches to normative theorizing that do not engage in interpretation fail to generate determinate principles. But it would be a mistake to maintain that practice-dependence alone offers an approach to normative theorizing that engages in interpretation and therefore has this advantage. In fact, practice-dependence is not unique in that it permits interpretation to shape normative principles for a specific social form, but only in that it permits distinguishing and content-generating claims of a specific kind to be decisive in the interpretative engagement. Let me explain: We can say that interpretative normative theorizing must include the following:

> (F) Establish what distinguishes a social form and what constitutes its point and purpose[39]
> (P) Select the normative principle(s) that, if applied to the social form, would render it the 'best of its kind' in moral terms

Distinguishing claims (F) and content-generating claims (P) come in three different types, and only the acceptance of the third type as decisive for (F) or (P) renders a theory practice-dependent. The first type of claim that one can make in relation to (F) is a conceptual, or definitional claim: Agreeing on conceptual boundaries of the relevant practice or social form is essential for guaranteeing that when two interpreters use a certain word to designate a social form, they are in fact referring to the same thing. For example, a conceptual distinguishing claim would be that when we talk about the state as a social form, we are referring to a distinctive kind of political order that ordinarily has certain features and serves certain functions. Distinguishing claims of the conceptual type can be 'external' to a practice by pointing out its point or purpose in a way that participants do not, or are unlikely to, share.[40] For example, when we ask a social

[39] "[W]e first need an interpretation both of the point and purpose of the institutions that the conception is intended to govern, and of the role principles are intended to play within them" (Sangiovanni 2008: 141)

[40] 'External' explanations to differentiate social form can be, but need not be, functionalist. Another type of 'external' explanation of a social form would be *modal*: for instances, many positivists legal theorists think that

scientist what a papal conclave is, she will tell us that a papal conclave is a meeting of a group of rather elderly men, most of them white, that enables them to select one of them as their leader and to thereby convey a number of important rights and privileges on that person. But not all conceptual claims will take the 'external' form: sometimes it will be difficult, even for social scientists, to distinguish social forms without referencing to 'internal' aspects, i.e. what participants within a form take to be the boundaries of it, or its point and purpose. But very often we will consider 'external' explanations more successful and adequate than mere reference to the internal understanding of participants: the response that money is whatever people take it to be money is a less satisfying one than one that lets us distinguish money from other things by reference to the function that it serves in human societies.[41]

The use of conceptual claims to distinguish social forms is not a marker for whether or not theorizing should count as practice-dependent: any account of theory application will need to use some account of the boundaries of the relevant practice or social form under consideration. More relevant for this question are claims of the second and third type, because these are often taken to provide guidance how to go about **(P)**. The second type is normative. Normative claims about a social form are statements about how a given form *should* be conducted in the light of what its morally most desirable instantiation would be, i.e. what could make that social form the best of its kind. Suppose we want to work out what the best interpretation of the social form of marriage is. We might reason that the best interpretation of a marriage is a loving relationship in which two adult persons make a public commitment to take long-term responsibility for one another.[42] Our reason for interpreting marriage in this particular light is that if this were the actual understanding of marriage in the world, then this would be the best world to have (of all the possible worlds in which the social form of marriage exists). Although we interpret the point and purpose, we take the reasons for endorsing this

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the distinguishing feature of the law is its claim to authority. For an account of functionalist explanation, see: (Cohen, G. A. 1978, chapter IX)

[41] Perhaps one reason for this is that reference to participants' understanding is always likely to provoke the further question why participants consider this or that to constitute the boundaries of the social form in which they engage. Shouldn't they have some conception of the relevant function that the form serves? Functionalist distinguishing claims seem less likely to run into this kind of trouble.

[42] A similar example is used in: (Meckled-Garcia forthcoming)

particular understanding of the social form of marriage, i.e. what should count as a marriage and what follows from this understanding for what principles should regulate it, to be objective moral reasons. Crucially, we do not assume that beliefs amongst participants concerning the form's moral significance have any stronger moral authority than that of external reasoners. This applies as much to *content-generating claims* as it does to *distinguishing claims* (i.e. both what one should do in a marriage for that marriage to be a good one, and what counts as a marriage do not depend on what people who are married think about either).

The third type of claim is practice-internal, by which I mean statements about how participants to the social form understand both its meaning and its purpose (including its moral purpose), how they would explain to others what it is they are doing when they engage in it, and why. Take again the example of a papal conclave. A practice-internal account of this practice would provide an account of how the members of the college of cardinals understand and enact the from their perspective extremely serious task of electing God's representative on earth, what they think renders certain kinds of procedures within this process valuable and necessary etc. One feature of practice-internal claims is that it is often difficult to distinguish between broadly descriptive elements (what is the practice?) and broadly moral ones (what should be the practice?). For example, a practice-internal distinguishing claim of what it means to continue a practice often makes reference to respecting moral values internal to the practice. Now let us say that an account is practice-dependent if (and only if) both (F) and (P) are ultimately decided by reference to claims of the practice-internal kind.[43] By contrast, an understanding of the task of interpretation that holds that moral claims –independent of whether or not they will resonate with practice-internal understanding- can be decisive in (F) and (P) is one that subscribes to 'normative interpretation' or interpretivism, but not practice-dependence. If we opt for such an understanding of interpretation in moral terms, we have not given up on the claim that (external, objective) moral judgments ultimately drive our normative principles. Thus, our account, whilst being interpretive,

[43] Whilst contextualists are clear that they accept the ultimate authority of practice-internal interpretation in both these tasks, institutionalists are less clear whether they accept its salience in both or merely in regards to differentiating claims. For a helpful discussion of the role of practice-internal interpretation in relation to David Miller's contextualism, see (Honneth 2008).

is not practice-dependent. The distinction between practice-dependence and interpretivism explains why the thought, entertained by some practice-dependent theorists that practice-dependent methodology derives from Ronald Dworkin's account of moral interpretation seems mistaken. Upon closer inspection, practice-dependence seems much closer to what Dworkin calls 'psychological states' accounts of interpretation, which he rejects.[44]

1.5.4.1 Practice-dependence and EU principles

With this more precise understanding of practice-dependence at hand, I shall now explain why we should not take practice-internal claims as a decisive element in determining our normative principles for the EU. One first reason is that practice-internal interpretation is prone to be indeterminate. This is a general problem for practice-dependent approaches, but one likely to come out particularly forcefully in the context of the attempt to derive the 'point and purpose' of a *unique* supranational political order from practice-internal interpretation of how participants understand this social form. One first problem relates to the question of the sources that could ground descriptive claims about the EU's point and purpose. Would these be the relevant international treaties of EU law? Or the spirit of the more recent EU directives? Or perhaps some currently prevailing view amongst EU citizens or their political representatives? Even if we restrict our focus to already existing scholarly research concerning the interpretation of the EU, there are numerous such approaches (e.g. intergovernmentalism, which takes the EU to be nothing more than a complex international institution, or federalist constructivism, which takes the EU to be the result of a pro-European federalist endeavour amongst a number of post-war statesmen etc.). Moreover, there will be fundamentally different practice-internal accounts in different political communities. Take just one example: the British "I-want-my-money-back"-attitude reveals a quite fundamentally different understanding of the practice's purpose and moral grounding from the historically dominating discourse in Germany, where the overriding consensus on the EU's purpose is that it serves as a form of 'atonement' or

[44] (Dworkin 2011: 128ff).

'compensation' in which Germany engages because of its war-mongering past.[45] In sum, any approach that will take some particular practice-internal description of the EU as decisive for the evaluation of normative principles will be either so broad as to make the application of distinctive principles impossible, or it will appear quite arbitrary.

The second problem with practice-dependence is that by permitting practice-internal interpretation of the social forms to determine how they should be conducted, such an approach lacks the ability to advance proposals concerning those principles that should apply to the social form that go significantly beyond the present self-understanding of typical participants. As many have observed, practice-dependent methodology blocks radical departures from present understanding amongst participants at the substantive level and has thus a built-in *status quo bias*. Again, an example from the EU is helpful in this respect: later on I argue that the supranational market in goods and labour has triggered conditions of interdependence that will require quite drastic revisions to the current practice of inter-state relations and requirements of redistribution and solidarity between them. But most current 'participants' fail to acknowledge the significant repercussions of having such a practice: they deny even prima facie obligations of socio-economic distribution beyond the confines of their national community.

Yet it seems that when political theorists merely accept the participants' prevailing interpretations and false moral and factual beliefs, they do not respect the core function that normative concepts like justice are meant to have, namely to critically evaluate social forms and propose ways in improving them. For these reasons, I do not subscribe to the approach of practice-dependent normative theorising. Rather, I take the interpretive engagement with the EU as a social form to be of the Dworkinian kind: we start with some conceptual notion of what the institution is (what else could we do?) and attempt to provide the best possible account of what it could become. Within this exercise, we do not privilege practice-internal understandings and interpretations of the social form that the EU is relative to abstract moral reasoning:

[45] For detailed accounts of these variegated national discourses concerning the EU's justification and purpose, see the various chapters in (Lacroix & Nicolaïdis 2010).

> "We must treat different people's conceptions of justice, while inevitably developed as interpretations of practices in which they themselves participate, as claiming a more global or transcendental authority so that they can serve as the basis for criticizing other people's practices of justice even, or especially, when these are radically different. The leeways of interpretation are accordingly much more relaxed: a theory of justice is not required to provide a good fit with the political or social practices of any particular community, but only with the most abstract and elemental convictions of each interpreter."[46]

1.6 Conclusion

Comprehensive theories of social justice are a relatively recent phenomenon: Up until the early 19th century, the concept of justice was almost exclusively applied to the evaluation of an individual's behaviour or limited allocative problems. Brian Barry argues that only during the 1840s did thinkers develop the „potentially revolutionary idea underlying the concept of social justice (...) that the justice of a society's institutions could be challenged not merely at the margins but at the core."[47] It is not surprising that this new ideal of comprehensively evaluating the structural features according to which political, economic and social life was organised in societies gained currency at roughly the same time that classical writers in the field of political economy developed an understanding of the basic macroeconomic relations that exist within nation states. And likewise it is perhaps unsurprising that the now extensive literature that scrutinizes the justice and legitimacy of the global political order only expanded when instances of pervasive global interdependence penetrated the everyday life of Western citizens and were systematically studied by economists and sociologists during the 1980s and 1990s.

It is in part the observation of this relationship between citizens' everyday perception of interdependence and insights from empirical research that motivates my project of studying such principles for the case of the EU: At least in some respects, the EU establishes a new form of social cooperation that those living under it only gradually –

[46](Dworkin 1986: 424-425)

[47] (Barry 2005: 5)

put perhaps now increasingly rapidly– come to experience as a distinct way of organising large-scale human interaction. But there is at present surprisingly little debate amongst political philosophers on the implications of the EU. There exists an extensive literature on a number of questions in political philosophy that bear directly on it, e.g. the question of democratic legitimacy or federalism or EU citizenship. But no comparably sustained discussion of social justice has taken place.[48] It is the aim of this thesis to fill this gap in the philosophical debate. The EU requires –and has developed- its own kind empirical research, for example in the form of economic analysis of shared monetary union under conditions of contemporary capitalism. I think the EU also requires sustained analysis from the point of view of political philosophy that is unique in at least some respects. That both the empirical claim about the EU's uniqueness and the normative consequences following from it hold true is only a claim so far – I will render it more persuasive in the following chapters.

[48] Two notable exception are the recent discussions in (Sangiovanni 2012c, 2013) and (Van Parijs 2011a).

Chapter 2

Social Justice and Social Equality

2.1 Introduction

The objective of this chapter is to provide a brief conception of the content of domestic social justice and to show how that conception connects to the ideal of social equality. This understanding is then used in the following chapters to assess whether substantive principles of social justice, including equality of opportunity and comparative principles regarding income and wealth, are required to govern supranational EU institutions. The chapter has five sections: The next section (section two) explains the conceptual relationship between social justice and the ideal of social equality. Section three provides a brief description of the content of principles of social justice, focusing specifically on why they must include comparative principles regarding the distribution of income and wealth and fair equality of opportunity. Section four explains in more detail the ideal of social equality. I then explore in section five how economic inequality contributes to social inequality. Thus, considerations stemming from the value of social equality provide additional *indirect* reasons to favour an egalitarian design for basic institutions in our thinking about social justice because large inequalities of income and wealth and radically unequal opportunity sets amongst persons sharing a social and political order undermine social equality. With this 'complex' or 'pluralist' conception of social justice in place, subsequent chapters turn to the European Union to assess whether arguments for domestic social justice are applicable to a political order of this kind.

2.2 Social justice and a social ideal

Social Justice. As I explained in the introduction, social justice for the purpose of this thesis concerns those principles that define what outcomes generated by basic institutions of a political order count as just. More specifically, social justice is partly *distributive* and outcome-oriented justice in the sense that it evaluates how primary

goods are distributed amongst those subject to basic institutions. One important feature of social justice is that *comparative* assessments play an important part in our evaluation: it matters how individuals fare under basic institutions relative to others subject to the same institutions. This makes evaluating institutions in social-justice terms at least partially distinct from evaluating institutions in terms of e.g. basic rights: a complaint against an institution formulated in terms of basic rights is a non-comparative claim about the institution's failure to respect or guarantee a person's rights. By contrast, a social-justice complaint against an institution can also be a *comparative* complaint, meaning that the institutions unjustifiably or unfairly favours some person(s) over others in the distribution of benefits, even if no person's basic right has been violated.

Social justice does not merely concern the kinds of (re-)-distributions of resources in the context of welfare policies in contemporary states, i.e. cases where state agencies quite literally take and redistribute financial resources between its citizens. Rather, social justice operates at a deeper level by determining how the various goods that depend on the existence of social cooperation are to be distributed in the first place. Some goods, for example public order or a stable legal system, only come into existence through social cooperation. But even in respect of goods that exist independently of social cooperation, their pattern of distribution and important aspects of how they can be enjoyed causally depend on the rules and norms that basic institutions establish: Whilst the earth's natural resources do not come into existence as a result of social cooperation, specific ways of enjoying them –most notably having ownership over them- do depend on basic institutions. Within the domain of economic activity on which I focus here, rules regarding property, taxation, permissible competitive conduct and labour relations are all notable examples of how basic institutions have distributive effects. A theory of social justice, therefore, specifies how the most important goods, primary social goods, should be produced and distributed. This task includes settling and enforcing not merely rules governing direct state action (e.g. taxation) but also regulation private economic interaction amongst persons in order to guarantee that such economic interaction does not upset just distributions over time.

Social Ideal. Whilst the objects of social justice assessments are features of the basic institutions of society, a social ideal describes how individuals should live together, which values and shared commitments should characterise their public and private interaction and their relationships. An egalitarian social ideal advances one particular conception of how individuals should live together. It specifies that the value of *social equality* should characterise these interactions. Thus, what an egalitarian social ideal requires is not per se the realisation of some distribution measured in terms of primary social goods, but the realisation of the deliberative 'practice' of living together as equals.[1] As I will explain in more detail below, social equality requires, first, equal power and standing concerning the most basic decisions of communal life and, second, the absence of specific kinds of hierarchies of worth in public life.

What is the relation between social justice (and in particular, economic justice) and social equality? Principles of justice regulate the basic structure of a political and economic order. By contrast, social equality is an ideal for (a subset of) human relationships. The ideal of social equality informs our choice of principles of justice because different principles of justice will have different effects on the possibility of sustaining social equality among persons. But the principles of justice are underdetermined by the need to sustain social equality. Other considerations may also enter. In particular, there may be specifically 'institutional' requirements of justice, which have to do with procedural and substantive fairness of such institutions. These derive not from a concern with social equality as such, but rather from certain features of institutions. These institutional forms of justice could also apply where institutions are not constrained by the need to sustain social equality, for example, because social equality is not in fact a value in the society these institutions govern. Since institutions can exist without relations of social equality, we cannot determine the scope of social equality simply by considering the scope of institutions (though the latter does bear on the proper scope of institutional forms of justice derived, e.g., from fiduciary considerations). With these points about the conceptual nexus between social justice

[1] See e.g. (Anderson 1999; 2012 chapter 3; Scheffler 2010, forthcoming) as well as (Miller 1982, 1997; O'Neill 2008, 2013; Scanlon 2003, 2005) who all maintain that 'social equality' plays either a major role in explaining why equality is an important value in political morality or that social equality *is* the proper subject of social justice.

and social equality in mind, I now turn to the task of elaborating a preliminary account of the content of social justice, before turning to the ideal of social equality in the next section.

2.3 The content of social justice: Pluralist egalitarianism

The kinds of liberal theories of social justice from which this thesis starts take for granted that states realise social justice only when they serves certain functions and bring about certain distributions of justice-relevant goods amongst those living under their authority. Setting up the issue of social justice in this way raises two important questions: First, in terms of what goods, or by what metric, must we measure the outcomes that basic institutions bring about? Second, what kinds of distributions should basic institutions bring about? My aim at this stage of the argument is not to comprehensively evaluate the merit of all arguments that could ground comparative and substantive principles of distributive economic justice. Rather, the point is to explain their prima facie persuasiveness and to present them in a preliminary fashion as potentially applicable to the special case of the European Union. The detailed work of assessing each of the possible grounds of egalitarian distributive justice is undertaken in the following chapters. In respect of the relevant goods that are to be distributed, I assume that primary social goods are the relevant category in respect of which distributions matter, thereby following Rawls.[2] Thus I understand rights, liberties, opportunities, income and wealth and social bases of self-respect to be the relevant goods whose distribution amongst those subject to institutions raises questions of social justice.[3] These primary social goods can be further differentiated into basic liberties ("constitutional essentials") on the one hand and resources and opportunities on the other hand ("basic justice").[4] The core set of basic liberties, according to Rawls, "concern[s] the acquisition and the exercise of political power"[5] and, therefore, these rights properly fall within the domain of political legitimacy as I have defined it in the

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[2] For some major contributions to the vast 'currency of justice' literature, see: (Clayton & Williams 2000). A defense of primary social goods as the most adequate currency of social justice is presented in (Rawls 1999c), (Pogge 1989, 2010)

[3] (Rawls 1999c: 79-80).

[4] (Rawls 1996: 230)

[5] (Rawls 2001: 48)

introduction. Thus, in my discussion of social justice, I say little about basic liberties and focus instead is *economic* justice, i.e. what constitutes a just distribution of resources and of opportunities to attain positions of advantage in the economic sphere. In respect of economic justice, two principles that I briefly defend here are (a) egalitarian (or equality-inclined) principles governing the distribution of primary social goods measured in terms of income and wealth and (b) fair equality of opportunity. For the purpose of this thesis, I will call conceptions that include these two elements conceptions of *substantive* justice.

The essential question anyone defending such a substantive conception of social justice must answer is why an equality-inclined distribution of primary social goods and fair equality of opportunity should govern basic institutions. In the literature, this question is often referred to as the question of the *grounds* of (substantive) justice.[6] The account of the grounds of substantive justice that I defend here is 'pluralist' in the following sense: whereas 'monist' or 'unitary' accounts maintain there is only one justice-grounding feature (or put differently: that there is only one successful strategy for arguing that basic social institutions need to be governed by substantive principles of social justice), pluralism argues that there can be –and in fact are- several, and mutually irreducible, considerations that ground requirements of egalitarian justice. In what follows, I briefly explain the most important reasons we have in favour of substantive justice within the context of domestic society.

2.3.1.1 Distributive equality: Social cooperation and reciprocity

One argument for egalitarian justice, advanced by Rawls, proposes that states must be understood as fair systems of social cooperation characterised by reciprocity amongst participants, and that no person can claim a greater share of the social product than any other without there being a particular kind of justification for upsetting this benchmark of equality.[7] The basic argument that Rawls presents is that (a) cooperative practices raise questions of distributive justice concerning the common productive surplus, that

[6] (Risse 2012; Sangiovanni 2007)

[7] This formulation permits Rawls justification of inequalities in-line with the difference principle: where inequalities make the worst-off better off it is plausible that nobody could have a reasonable objection to such inequalities.

(b) a state's basic structure is a cooperative practice whose productive surplus comprises nearly all prerequisites for human flourishing, and that (c) cooperative practices require equal shares when participants have equal claims to their benefits (subject to considerations of efficiency). Since Rawls insists that individuals in fact have equal claims to the benefits of social cooperation, he concludes that a state's basic structure must distribute shares of primary social goods equally amongst participants of social cooperation.

The argument that society conceived of as a system of fair cooperation yields the conclusion that individuals are owed equal shares of the social product –premises (c) above- is controversial. One way of arguing for it would be to maintain (implausibly) that individuals contribute equally to the actual social product. Rawls' argument is slightly different: he suggests that even if some individuals contribute more, they have no direct claim to a bigger share of the social product because their ability to contribute depends on factors that are 'arbitrary from a moral point of view'. Natural contingencies such as talents cannot generate moral claims to a larger share than those less fortunate, partly because nobody deserves to be born with a specific set of skills and talents, partly because the conditions that render specific talents valuable in a particular context are contingent on other aspects of social cooperation for which the talented person can claim no credit.[8] Thus, we should see natural talents and their distribution amongst participants to social cooperation as "a common asset" that must benefit all and especially the worst off.[9]

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[8] See the useful discussion of this second point in (Sangiovanni 2007: 25-30). Admittedly, this is quite a strong reading of Rawls. Some interpret him as merely rejecting the idea that individuals have a straightforward entitlement to the fruits of their labour that would make redistribution unjust, without rejecting the idea of pre-institutional desert altogether. In opting for the stronger interpretation I rely on formulation such as the one that "the essential point is that the concept of moral worth does not provide a first principle of distributive justice (...) because it cannot be introduced until after the principles of justice (...) have been acknowledged." (Rawls 1999c: 275) See the useful discussion of Rawls's ambiguous use of the concept of desert in (Scheffler 2001 chapter 10)

[9] "In justice as fairness men agree to avail themselves of the accidents of nature and social circumstances only when doing so is for the common benefit." (Rawls 1999c: 88) See also: (Rawls 2001 §21-§22)

2.3.1.2 Distributive equality: Equal treatment

Interpreting society as a fair system of social cooperation is not the only way in which we may arrive at a 'benchmark of equality' in determining what counts as a just distribution of the primary social goods of wealth and income. Thomas Scanlon argues that beyond the Rawlsian argument from cooperation and equal moral entitlements, there may be different versions. One derives equal shares from the thought that "where each member of a group has the same claim that some individual or institutional agent provide it with a certain benefit, and if that agent is obligated to respond to all of these claims, then the agent must, absent special justification, provide each member of the group with the same level of benefit."[10] The basic point of this complex conditional is that individuals subject to a state constitute a group of equal claimants to whose claims state institutions must respond by specific forms of equal treatment. Importantly, for such requirements of equal treatment to arise it need not be the case that citizens have in some sense equally contributed to the creation of the benefits that social cooperation has generated (as the Rawlsian story about fairness in the cooperation to produce primary social goods proposed). Both Scanlon and Dworkin use the example of a parent considering how to distribute a heritage amongst her children to indicate the kind of requirement of equal treatment. Thinking about the state, it is sufficient that the state is in some sense the agent or fiduciary of those living under it and to whose claims for goods the state has to respond with equal concern.[11] In relation to state institutions, the example that Scanlon mentions is that of the provision of public infrastructure by a state. He believes that if one part of the community receives a certain benefit through the provision of a certain level of public goods, then all citizens have a claim to receive an equivalent benefit, independent of whether or not they all equally contributed to the states' basic institutions.[12]

What considerations other than cooperation may give rise to claims to equal benefits in a distribution of some good? One thought is simply that equal needs or equal vulnerability to those contingencies of human life that the basic institutions of society

[10] (Scanlon 2005: 10). Similar cases are discussed in (Miller 1997).
[11] (Dworkin 2000; Scanlon 2013a)
[12] (Scanlon 2005)

can mitigate to some extent may be sufficient to ground such an argument. One could interpret Rawls as hinting towards this when he mentions the pervasive and comprehensive effect that the basic structure exercises on every person subject to it from the beginning of her life.[13]Another type of cases in which goods ought to be distributed equally are 'manna-from-heaven' cases, i.e. cases where there are no differential needs for, or antecedent claims to, the good that is to be distributed.[14]

2.3.1.3 Distributive equality: Coercion and authority

A third argument for substantive justice is based on the moral relevance of facts about *how* political institutions relate to those subject to their power, more specifically how subjects are brought to comply with the rules that govern the institution: States claim authority over people and generate compliance with their directives by inducing and where necessary forcing people to obey them. The third argument holds that there is something specifically problematic about exercising political authority and forcing individuals to obey, such that the only way to redeem the morally problematic character of such acts is to be found in equal treatment that extends to an equal distribution of the product of primary social goods that the system of forcibly implemented rules makes possible.[15]

2.3.2 Equality of opportunity

The motivation for a principle of fair equality of opportunity stems from two considerations, one empirical and one normative. The empirical claim is that plausible assumptions about human motivation in combination with the complexity of modern societies and the positive effects that a division of labour has on the provision of adequate levels of primary social goods mandate that any institutional system must permit some inequalities in the distribution of primary social goods.[16] Of course, accepting this empirical claim in no way implies accepting the degree of actual

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[13] (Abizadeh 2007; Rawls 1999c: 82)

[14] (Miller 1997: 226-228)

[15] (Blake 2001; Nagel 2005)

[16] "[A]ny modern society, even a well-ordered one, must rely on some inequalities to be well-designed and effectively organized." (Rawls 2001: 55)

inequality in primary goods (most notably income and wealth) that we find in contemporary capitalist societies. But it does imply that some incentives are permissible and potentially positively desirable if they can motivate the more talented to be productive in ways that improve the condition of those worse off, and, as a result, that some positions in society will be more desirable in terms of the primary social goods they offer than others. The second, normative assumption is that that once an arrangement for social cooperation permits the existence of more desirable positions in terms of wealth/income and authority in economic life[17], it would be unfair if some would be advantaged in obtaining these positions for reasons unrelated to the task of fulfilling them in ways that serve the common interest. Equality of opportunity understood in these terms as a prohibition against discrimination and nepotism is a widely shared ideal, not confined to conceptions of social justice of the egalitarian brand.

But what Rawls called 'fair' equality of opportunity goes beyond the idea of non-discrimination and is in fact a very demanding requirement, for it stipulates that "those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed."[18] Fair equality of opportunity defended in these terms extends beyond non-discrimination because it requires that each person should also have equal prospective chances of ending up in a desirable position of advantage independent of contingent facts about her such as class or family background: two persons with equal talents and motivation should have equal prospective chances.

What demands would the ideal of fair equality of opportunity thus conceived put on the basic institutions of a social and political order? At the very least, its realisation

[17] Recall that authority to determine the shape of the political order falls under the heading of legitimacy according to the terminology introduced in the introduction.
[18] (Rawls 1999c: 63)

would require drastic changes to the way in which aspects other than innate talents and motivation today are able to shape the likelihood of a person ending up in a position of authority or economic advantage. For example, it is hard to see how many of the advantages that well-to-do parents can bestow on their children –ranging from tangible benefits such as financial advantage transferred through gift and inheritance over private education to less tangible benefits such as social etiquette and basic self-esteem- could be permitted under fair equality of opportunity, and it is very difficult to determine where to draw a line.[19] Realising fair equality of opportunity thus seems to require basic institutions that either limit well-off persons' abilities to alter probabilities of success for themselves and those close to them, or institutions that significantly extend forms of 'compensation' and free provision of education to those from disadvantaged backgrounds who have not received such additional benefits.[20] This seems conceivable where 'tangible' aspects like monetary benefits and public education are concerned. Indeed, one upshot of the ideal of fair equality of opportunity is that it offers yet another reason in support of distributive institutions that resolutely limits the extent of inequalities of income and wealth within society.[21]

But the issue becomes much more difficult once we turn to the more 'intangible' benefits mentioned above. It is hard to see how basic institutions could ever fully realise fair equality of opportunity fully without resorting to extremely illiberal policies like preventing parents from reading bedtime stories to their children. Rawls himself conceded this when he stated that "[t]he principle of fair opportunity can be only imperfectly carried out, at least as long as some form of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social

[19] (Miller 2013)

[20] (Scanlon 2005: 17ff.)

[21] This is the point stressed by (O'Neill 2008, 2010). Of course, one could not derive an argument for *full* equality of outcome in terms of income and wealth from inequality of opportunity, for the latter starts from the assumption that there are some positions of advantage in society (and hence some justifiable inequalities of outcome amongst persons) the access to which must be procedurally just.

circumstances."[22] Luckily, my key concern here is not to determine comprehensively how the ideal of fair equality of opportunity must be balanced against other values in political morality, but merely to explain that it is an independent valuable ideal that has some force. At least in those domains where the realization of fair equality of opportunity does not come into conflict with other equally important values, there is a fairly robust consensus -extending beyond those believing in egalitarian economic shares in terms of *outcome*- that we should structure the basic institutions of a social and political order in such a way that they realise this ideal.

2.4 The social ideal: Relational and social equality

A social ideal is a broad conception of how individuals should live together and how their relations to one another should be structured. As I mentioned before, the social ideal proposed here is one of social equality - but what does it mean to say that a social ideal is *egalitarian*? It is to say, at the very least, that some understanding of the value of equality figures in a fundamental way in that ideal, i.e. that equality plays a prominent role in our description of how people live together when the social ideal is realised. But this leaves space for many different and to some extent competing understandings of how, when, and why equality matters.

Two important initial points are these: First, equality is often invoked in contemporary moral and political debates in terms of a notion of basic moral equality of human beings. Ronald Dworkin, for example, says that there is a commitment to equal concern and respect (sometime called an 'egalitarian plateau') that is shared by all contemporary moral and political theorists: in constructing a conception of justice or some other value, we agree with the foundational commitment that for a community over which our conception is to range, "the interests of the members of the community matter, and matter equally."[23] Since the idea of basic moral equality is clearly a necessary element in any acceptable contemporary moral view, it is not an element that interestingly

[22] (Rawls 1999c: 64)
[23] (Dworkin 1983: 24)

distinguishes egalitarian and non-egalitarian ones.[24] Many philosophical positions, including those often contrasted with more strictly egalitarian ones, e.g. utilitarianism or libertarianism, affirm the egalitarian plateau. Second, most contemporary conceptions of just political order take the view that no such order can be acceptable without adopting certain procedures that treat all individuals equally: the idea that the law of the land applies to everybody without discrimination does of course invoke the ideal of equality amongst those subject to the law, but we find a commitment of this kind amongst all broadly liberal positions in political philosophy. So again, whilst the acceptance of certain forms of procedural equality is a necessary element of an egalitarian position, it is not an interesting feature of such views.[25]

What renders a social ideal egalitarian, I maintain, is the insistence on the value of relational equality, understood as the property that interpersonal relationships have when they are conducted amongst equals. The task to which I now turn is to define relational equality in more detail and to describe the form that this conception of equality adopts when applied to persons jointly subject to common institutions and societal norms. However, before I define relational equality, I want to explain one aspect of how I conceive of relational and social equality: I assume that the value of the kind of equality that characterises a social ideal, namely social equality, can be better grasped if we understand why it is valuable to conduct our most important *interpersonal* relationships (for example our intimate friendships, marriages and important work relationships) as relationships among equals.[26] Thus, the reasons that render social equality valuable from an egalitarian perspective are closely connected to the reasons we have to be part of valuable interpersonal relationships.

Relationships. Some relationships are not conducted as relationships amongst equals: the submissive and dependent wife under the control of her husband, the slave and his

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[24] Dworkin recognises this: "[T]he right to equal concern and respect, then, is more abstract than the standard conception of equality that distinguishes different political theories. It permits arguments that this more basic right requires one or another of these conceptions as a derivative right or goal." (Dworkin 1977: 180)

[25] (Miller 1982: 74)

[26] "[E]quality is not an emergent value that appears for the first time at the political level, and we should be able to see some connection between the way it functions in political contexts and the way it functions in other contexts. It would be an objection to an account of political equality if it allowed us to see no such connection." (Scheffler forthcoming: 6)

master, as well as the exploited sweatshop worker and her well-to-do boss are familiar examples. There are many ways of characterizing the badness of these relationships. One prominent way is to show that these relationships make (at least one party to them) unfree. The distinctly relational egalitarian way of conceiving the badness of unequal interpersonal relationships is that such relationships are non-instrumentally bad because it is bad to live with others in ways that do not express our fundamental standing as equals: where certain kinds of relationships exist, they will have an irreducible value when they are conducted as relationships amongst persons who consider one another to be equals and ordinarily act on this sentiment.[27] Equality thus understood is an interpersonal *practice*: we can speak of 'rules' and 'norms' governing the practice, as well as 'strategies' and 'dominant beliefs' of those participating in it. Since many aspects of the practice that constitutes the relationship are subject to deliberation and are determined by participants, it makes sense to talk about how successful each party is in making the relationship conform to her interests, needs and so forth. Where one party is much better at shaping the rules and norms in her favour, we are tempted to speak of an *unequal* relationship.

This gives a first hint as to how we can know that a given relationships respects the value of equality. But is there a more systematic way of answering this question? Samuel Scheffler argues that equality in a relationship can be approximated by reference to what he calls the *egalitarian deliberative constraint*. Only where participants to a relationship adhere to this constraint is their habitual interaction governed by the ideal of equality. The deliberative constraint is satisfied in a relationship just in case that "each person accepts that the other person's equally important interests –understood broadly to include the person's needs, values, and preferences- should play an equally significant role in influencing decisions made within the context of the relationship. Moreover, each person has a normally effective disposition to treat the other's interests accordingly."[28] Satisfying the constraint requires individuals to be disposed to treat each

[27] This is of course not to say that unequal relationships (e.g. some person having authority over others in civil or military bureaucracies) may not be all things considered justified or even morally required. The claim is merely that if those values that are realizable only by establishing inegalitarian relationships could equally well be advanced without having authority relations, then something valuable would be gained.

[28] (Scheffler forthcoming: 8)

other as equals, and they must collectively engage in deliberation to determine whether and how the egalitarian constraint is satisfied. But as the constraint can be satisfied in various different ways, there is no precise formula as to how participants need to interact in order for their relationship to be one amongst equals. For example, Scheffler mentions various strategies that may help to uphold relational equality amongst friends or spouses in the face of disagreement about collective choices or distributions, such as 'splitting the difference', 'choosing each one's second best', or 'taking turns'. These practical solutions permit participants to continue to see the decisions that are being reached as compatible with being equals in the context of the relationship.[29]

Scheffler's description gives an important indicator of the kinds of features that egalitarian relationships display. Yet his approach underplays the significance of power differentials in interpersonal relationships. In many instances such power differentials (specifically: power differentials about the continuation, content and boundaries of the relationship's demands) seem to play an important role in our judgment about the relationship's egalitarian character, independent of whether or not individuals are aware of these differentials, and, moreover, whether or not each participant uses her power in ways that are consistent with each participants belief that each party's interests matter equally within the context of the relationship. For example, Scheffler's egalitarian deliberative constraint seems compatible with a paternalistic relationship between parents and (adolescent) children: we can plausibly assume that each, parent and child, in their interaction respect Scheffler's egalitarian constraint. This is principally because Scheffler's definition only picks out the *interests* of each party. Thus, parents who assume that they can better judge their children's interests can then implement those decisions whilst considering the interests of parents and children to count as equally important within the context of their relationship. But of course, the parent-child relationship is a prime example of a relationship that is not conducted as one amongst equals. It seems to me then that what matters in egalitarian interpersonal relationships is both the recognitional aspect of equal standing that is conveyed by the attitude that each party must display in accordance with Scheffler's deliberative constraint, <u>and</u> equal

[29] ibid. p.10

power over (at least) the continuation, content and boundaries of the relationship. In the light of these considerations, it strikes me that the best account we can give of an egalitarian interpersonal relationships is roughly the following:

> Participants in the relationship (a) have approximately equal power over the continuation, content and boundaries of the relationship and (b) each use their power within the relationship in ways that express (or at least do not contradict) the idea that the interests of all participants matter equally

A simpler formulation would be to say that participants (a) have equal power over the relationship and (b) value the fact that they do so. Yet this formulation would ignore that participants may value equal power merely instrumentally for the realization of something external to the relationship. Thus, the fact that they each endorse that they have equal power as far as the relationship is concerned means that they must believe that all parties to the relationship have some equally fundamental basic standing to advance claims and have their interests respected. But the fact that they believe this to be true seems insufficient – it must be also at least approximately true that participants *actually* have equal power over the relationships' terms.

2.4.2 Social equality

What are the requirements of a 'relationship of equals' for the special case of people sharing social, political and economic norms and institutions? The natural name that suggests itself for this special domain of relational equality is 'social equality'. Assessing a situation in terms of social equality is possible whenever people (a) more or less permanently share important aspects of a social world with one another, and (b) there exist stable norms of conduct between them that are likely to convey judgement of value about groups or categories of persons.

First though, we must note some crucial differences between interpersonal relationships and relations amongst members of society. Most obviously, members of society are connected in a much less intimate way to one another: in contemporary societies, one only ever meets a tiny fraction of one's fellow citizens in person. As a consequence,

there is no, or at any rate much less, weight that each one can place on personal interaction and direct deliberation to determine whether or not social equality prevails. Two important characteristics that follow for social equality are first, that rather than assessing personal interactions, we scrutinize social norms and values entrenched in societal practices and institutions in terms of whether or not they confer equal standing. Second, the relevant inequalities of standing that we are analysing are not –or not in the first instance- those between individual persons but between groups or categories of people based on their (mostly) socially ascribed characteristics. Similarly, the question whether or not some person or group can exert power over society in a way that is inconsistent with people relating to each other as equals is first and foremost a question about the extent to which such persons or groups have disproportionate power over common institutions or how they can determine the formation of social norms. What these preliminary facts show is that social equality is an especially complex version of relational equality.[30]

Yet despite these differences, the sources of relational inequality we identified in inegalitarian interpersonal relationships, namely, unequal standing and unequal power find their correspondence here in the form of hierarchies of worth that allow us to place some people unequivocally above others in basic standing, and, as far as power is concerned, in the dominance that some people have over common institutions and social norms. More positively, we can say that a society of equals is characterized, first, by a kind of symbolic equality that corresponds to the 'subjective' element of participants perceiving themselves to have equal worth as members of a society ('as participants to the relationship'), and, second, by an approximate equality of power to determine the basic institutional rules governing communal life. As far as the first of these is concerned, the idea of a class- and rank-less society is analogous to the idea of equal standing in interpersonal relationships. Overcoming settled hierarchies of worth with their damaging effects for citizens is thus one central element of the ideal of social equality. As Scanlon argues: "the aim of avoiding stigmatizing differences in status appeals to an ideal of fraternity that is fundamentally egalitarian, and has been central to

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[30] (Miller 1997: 232)

the egalitarian tradition."[31] Similarly, the insistence on democratic procedures has been a hallmark of egalitarian thinking because it is a necessary (though perhaps not sufficient) condition for people to exercise approximately equal power over the basic terms of the 'relationship' in which they stand as fellow citizens.[32]

Whilst the achievement of equal power has a relatively clear institutional counterpart in democratic rule characterised by political equality, it is a difficult question how we can give the more recognitional element in social equality, i.e. the idea of equal status, a more concrete realisation in the relations amongst persons living under a political order. One important suggestion here comes from Michael Walzer in the form of what he calls 'complex equality'.[33] Contemporary societies are differentiated into various different spheres of evaluation distinguished by different social goods, such as 'the educational sphere', the sphere of economic success ('money'), the spheres of cultural and artistic achievement, recognition for scientific discovery etc. Walzer's key idea is that unequal social status arises amongst persons living in society where one identifiable group outranks the indexed position of other groups.[34] The argument is roughly the following: equal status obtains when prevailing social norms do not permit to place one identifiable group of individuals clearly above any other group. Necessary but insufficient elements for equal status amongst (adult) citizens are equal basic rights of citizenship and equal power over common institutions in the form of democratic rule.[35] But to realise equal status, social groups must also be equal by reference to another form of social hierarchisation, namely that of esteem. The best (and perhaps only) strategy in this respect is to make interpersonal judgements of esteem incommensurable by recognising several distinct spheres of social recognition. For example, it is impossible in contemporary society to say whether social norms grant more social

[31] (Scanlon 2005: 15)

[32] (Beitz 1989: 109-110; Kolodny unpublished)

[33] (Walzer 1983). Walzer thinks that complex equality is in fact one core element of social justice. I do not share that belief, nor do I share the relativist tendencies that Walzer seems at times to embrace. For a constructive discussion of how to keep these elements apart, see (Scanlon 2013b)

[34](Walzer 1983), See also David Miller's defense of complex equality and the critical discussions (Miller 1995a) as well as (Swift 1995) and (Waldron 1995).

[35] Strictly speaking, equal power is consistent with institutions other than democratic ones, e.g. institutions where all are equally powerless because all decisions are made by lottery. I disregard this point in the discussion.

recognition to a successful opera singer than to a successful stockbroker. They each score highly in a particular sphere of social esteem but any proposed 'ranking' between them is unlikely to command general social acceptance.[36] Since we cannot construct such a generally accepted ranking, the idea is that we can only 'fall back' on the status of equal citizenship that our political institutions grant each of them.[37]

Now incommensurability of esteem between groups –and thus social equality- can be threatened in three different ways: First, members of one group may simply come to outrank members of every other group in each of the different spheres. Though possible, the occurrence of this seems rather unlikely in societies such as ours where there is a broad range of spheres of esteem that require very different qualities and skills. Just think again of the stockbroker and the opera singer. The second and third danger to equal status both relate to the particular sphere of economic achievement and money, at least insofar as we are concerned with contemporary capitalist economies.

One danger is that of *dominance*, which occurs when those holding money will be in a position to leverage the economic power they command to improve their ranking in other spheres.[38] For example, our wealthy stockbroker may decide to pay for expensive singing lessons to improve his otherwise mediocre baritone, and –perhaps with the further help of a large donation- some opera house will select him to sing the role of Mozart's *Don Giovanni* in a performance. So as a result of his towering position in the sphere of money, the stockbroker can improve his position in other spheres of esteem. Examples like these (and more serious ones) are significantly more real than the thought that some people miraculously outperform all others in all spheres. In fact, the very nature of a liberal market economy makes it difficult to see how dominance of this kind can be practically restricted. Moreover, the fact that money does act as a means to make different social goods commensurable appears not merely like a fact that is in certain respects inevitable, but also like one that is to be positively welcomed in many

[36] (Miller 1995a)

[37] (Miller 1995a). Elizabeth Anderson hints at a similar strategy when she distinguished between different forms of hierarchy that social life may give rise (Anderson 2012; Darwall 2006).

[38] (Miller 1995a: 214-215).

domains of human activity because it allows to break-down illegitimate forms of social exclusion.[39]

The third danger to equal status arises in the form of *pre-eminence*, which is the phenomenon whereby "one sphere of distribution (...) become[s] so pre-eminent that people can be ranked socially simply on the basis of how they perform in that sphere."[40] Again similarly to the previous threat to social equality, the most likely form of occurrence of this phenomenon in contemporary society is in the economic sphere. More precisely, the threat arises when having and spending money becomes the universally accepted, decisive hierarchy of esteem in society. Pre-eminence of this kind is often associated with the rise of materialism and consumerism, to wit, the widespread belief in capitalist societies that material lifestyle comprising the ownership of expensive, often positional, goods rightfully constitutes the most important basis of social recognition.[41]

2.5 How social equality structures the content of social justice

The last section turned to relational and social equality to explain the fundamental aspects of the egalitarian social ideal of this thesis. But how is this ideal connected to the issue of this chapter, namely the notion of social -and especially economic- justice? Surveying some of the recent empirical studies of social exclusion, Martin O'Neill concludes that "distributive [economic] inequalities tend to bring with them relationships of social domination, harms to individuals' status, the breakdown of healthy fraternal social relations, and the erosion of self-respect (especially of the worst-off)."[42] Notably, this list includes the two aspects of social equality on which I have focused in the last section, namely equality of power and status, which together constitute social equality. Thus, what is suggested by the quote is that the realization of the egalitarian social ideal hinges on the output of the economic aspects of the basic

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[39] (Waldron 1995)
[40] (Miller 1995a: 212)
[41] Empirical studies about the growing degree of consumerism/materialism are surveyed in (Zukin & Smith Maguire 2004).
[42] (O'Neill 2010: 403)

structure, i.e. on aspects of economic justice as I have defined it. But to show that O'Neill's assessment is actually true, namely that there is a *causal*, as opposed to a mere correlative relationships between economic inequality and the evils of social inequality, a detailed account of the way in which economic inequality may lead to social inequality is required. More specifically, I want to point to two consequences that a commitment to the ideal of social equality has for the organisation of basic institutions, including those distributing economic advantage. These arise, first, as a concern with genuinely equal power over the shape of political institutions and social norms, and second as a concern with the recognitional element of social equality. Whereas the first concern primarily arises under conditions of what may be called 'top-level inequality', that is, a situation where a small group in society has vastly *more* than the brunt of people, the second concern arises primarily under conditions of 'bottom-level inequality', that is, a situation where some persons have significantly less economic resources than the average or median citizen. I argue that whilst the first concern gives us reason to limit overall economic inequality that the basic structure permits, the second concern speaks in favour of an (unconditional) social minimum that is defined relatively to what others in society have.

2.5.1 Inequality at the bottom: lack of resources, humiliation and status

Let us turn first to the impact of economic inequality on the recognitional aspect of social equality. There are several respects in which economic inequality may threaten equal status, but I will focus here on two aspects in particular. The first one arises even before we assess the impact that material inequality may have on equal status understood as 'complex equality' between separate spheres of achievement. What I mean here is that there exists a prior and more basic recognitional requirement in the sense that one needs to be acknowledged as a person with standing to compare oneself to others. And it is this more basic standing that is unachievable if one lacks a robust minimum of material resources. Importantly, the necessary minimum of resources is not some absolute level, but must instead be conceived *relatively* to what others in society have.

Why might this be the case? Brian Barry explains the causal mechanism like this: all societies that we know of develop certain standards of respectability.[43] Where a person does not meet these standards, her recognition by others as an equal participant to public life is put into question. Such standards of respectability change over time, and they generally develop in ways that require more material and financial resources to meet them. For example, the 19th and 20th century saw the development of progressively more resource-demanding standards of hygiene and public appearance that allowed the aristocracy during the 19th century to speak of lesser people as 'the great unwashed'.[44] Another example Barry mentions is that of a person's teeth-alignment, which was until some point after the second world war an irrelevant factor for whether or not one was a respectable person in public. However, since the arrival of affordable dentistry for the middle-class "to be snaggle-toothed is to be looked down on."[45] But teeth-alignments cost substantial amounts of money, such that poor persons can rarely afford them. What this example shows is that in order to be able to gain the status of a respectable person, one requires material resources that do not fall too short of what the majority in society considers to be an adequate level. The institutional consequence of this first aspect is that the economic structure of society must provide every person with a social minimum that enables her to gain basic status as a respectable person. Establishing such a social minimum is a straightforward consequence of our concern with how individuals can relate to each other in society, and it is independent of the direct institutional arguments for substantive justice discussed in section three of this chapter.

Two observations are important at this point: First, that the sort of considerations concerning stigmatization and humiliation do not get us by themselves all the way to anything approximating egalitarian (or maximin etc.) distributions of economic shares. They specify a level of sufficient resources that one needs to have, even if that level varies by societal standards. Moreover, whilst the absence of humiliation and

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[43] (Barry 2005: 173)

[44] (Barry 2005: 173)

[45] (Barry 2005: 173)

stigmatization is clearly a pre-requisite for social equality, it is not a sufficient condition.[46] A second point is that material inequality only causes damage to social equality where people believe in discriminating and exclusionary standards of public respectability of the teeth-alignment or washing hygiene-sort. Thus, if we changed the norms of respectability in such a way that they are more accommodating to those lacking the relevant material means, there would be no need to interfere with the distribution of income and wealth.

This last point raises the question whether the concern with basic respectability really does give rise to a requirement of a material social minimum. Shouldn't we just change the unjust norms underpinning the idea of basic standing and respectability? I think the correct response to this doubt is that clearly, we should not conceive of limiting material inequality as the sole response to unequal standing in public. But providing a social minimum is certainly one important response to ensure the existence of basic standing, in particular because it seems very difficult (and quite plausibly illiberal) to predict and comprehensively shape those standards of respectability through state institutions and officially mandated norms. Thus, policies that limit material inequality and ensure every person the means to be recognized by others as an equal in public contexts seem crucial indeed.[47]

If granting individuals a material social minimum is one important institutional strategy for safeguarding social equality, then two further questions arise. The first one concerns the terms of such a social minimum: does it need to be unconditionally provided? If protecting social equality requires an unconditional social minimum, then at least potentially, there could be a conflict between our aim of protecting social equality and considerations of fairness in the distribution of primary social goods: Imagine that institutional fairness includes a component of individual responsibility such that when a person destroys or gambles away her fair social minimum, there is no claim of fairness that it be reinstated. Is this then not a situation where the maintenance of social equality

[46] Nor, we should add, is the fact that humiliation and stigma threaten social equality the only objection one should have against them.
[47] (Schemmel 2011)

would require us to continue to provide the minimum (lest the lack of means disturbs social equality) whereas fairness would require us not to provide it?

To avoid such a conflict, should we perhaps say that social equality only requires that persons be given the *opportunity* to gain the status of a respectable person? But this does not strike me as a very attractive proposal: First, and quite generally, providing merely the opportunity for gaining basic respectability does not ensure that the loss of respectability will not occur. But social equality is about outcomes rather than opportunities; the ideal is that of a society where individuals do relate to one another as equals, not merely one where they *could* do so. A second argument why a merely conditional social minimum might not protect equal basic standing is more institutional and pragmatic: Imagine the social minimum would be conditional on some appropriate behaviour, responsible exercise of agency, and so forth. The institutional implementation of such a system would require some forms of surveillance and monitoring of whether individuals use their minimum responsibly. But introducing social policies of this kind seems itself to contradict the ideal of social equality.[48]

Insisting that social equality is a matter of generating the actual existence of basic respectability for every person (rather than merely the opportunity to do so) gives rise to another potential problem: if outcomes are what matters, then should we not in fact require people to make themselves so basically respectable, i.e. should the state make tooth-alignment and so forth not merely a freely available options for the poor, but should obligate them to take up these options (potentially by forcing them)?[49] That implication would be quite unwelcome; it would show that realising the ideal of social equality potentially has quite illiberal consequences. It would mean that social equality in some fundamental respect might require the restriction of individual freedom. Perhaps this is not fatal –we might still attempt to realise the ideal whilst weighing it with the external value of personal freedom. But given the importance of individual freedom in any liberal view, the application of the ideal would be severely curtailed if it had the implication that people need to be forced to straighten their teeth.

[48] See e.g. the discussion of this in (Anderson 1999; Wolff 1998)
[49] I thank David Miller for bringing this point to my attention.

Luckily, I think there is a more internal response from within the ideal of social equality available to demonstrate that realising the ideal does not have the implication of having to force people to make themselves respectable: even though the material minimum should be supplied unconditionally, it need not lead to illiberal requirements of forcing people to conform to the social norms. Consider again the point that some of the existing norms stipulating basic standing are quite arbitrary, discriminatory, and so forth. Even if the state should not attempt to alter these norms coercively, it seems that it should at least grant individuals the opportunity to challenge these norms and attempt to change them in a more inclusive direction. But if the state would in fact require teeth-alignment and so forth, then it would not be neutral but in fact enshrine the presently existing norms of respectability.

Think of a person who intentionally defies prevailing norms of respectability to reveal their discriminatory basis. Such a person is obviously very different from somebody who cannot help but fail to conform to these norms. What should the state do to support such persons without coercively interfering with the development of the norms themselves? I think one thing that the state *can* permissibly do is to generate conditions such that the expressive nature of the person questioning the prevailing social norms of respectability is revealed most clearly to the majority – and providing an unconditional social minimum will do just that. If it is public knowledge in society that everybody could get their teeth straightened if they desired, then somebody publically questioning this rule by defying it will not simply be assumed to be somebody lacking basic standing.[50]

2.5.2 Inequality at the top: material resources and unequal power

I argued that one aspect of social equality is an approximate equal distribution of power amongst those subject to the norms of society to determine these norms. There are strong reasons to suspect that large inequalities in income and wealth tend to undermine this aspect of the ideal of social equality by translating unequal economic

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[50] The issue here raises complex question that for reasons of space, I cannot assess in the depth that they deserve.

means into unequal power over norms and public institutions. As Thomas Scanlon suggests, "those who have vastly greater resources than anyone else (...) can often determine what gets produced, what kinds of employment are offered, what the environment of a town or state is like, and what kind of life one can live there. In addition, economic advantage can be translated into greater political power (...)."[51] Where these kinds of conditions obtain –and in particular where those with significantly more resources can shape political decisions and determine the functioning of institutions, it is difficult to see how individuals *could* legitimately see one another as participating as equals in the political relationship.

Even if the connection between unequal resources and unequal power is not inevitable (a democratic government is one institutional setup that reduces its salience), it seems painfully obvious that even in the most democratic western societies money currently does buy political influence. Of course, it may be the case that against certain ideal background conditions unequal power over particular political decisions is not all that problematic, provided all persons have equal opportunity to participate in the political process. But in the face of the spectacular difference in wealth and income we see in these societies, there is much room for doubt that difference in political power stem from the mere fact that some people decide to implement their share of resources to influence the political process in legitimate ways, whilst others use it for personal consumption. What institutional desiderata follow from this? Obviously, one is the basic procedural requirement that the *political-constitutional* system is organised substantively democratically, which will include preventing mechanisms by which economic power can exert influence over political decisions. But if there is little hope of preventing such spill-over effects –a position that seems confirmed by the prevailing tendencies in most democracies- then a concern with the element of equal political power may well require a much stronger equalization of economic holdings in the first place.[52] Ensuring the condition of equal power in the political process through the equalization of economic holdings may actually have not merely a practical but also a moral rationale in that it is a more liberal approach: where citizens enjoy more equal

[51] (Scanlon 2003: 205)

[52] See the discussion of this point in (Scanlon 2005)

shares there will be no institutional policies needed to assess whether a person uses her resources in a way that might be inconsistent with equal power.[53]

2.5.3 Inequality at the top II: material resources, esteem and social dominance

The second aspect where material inequality can endanger equal status arises through the phenomena of dominance and pre-eminence in relation to hierarchies of esteem discussed in the previous section concerning complex equality. Because of this second aspect, even a society in which nobody is stigmatized might fall quite short of meeting the ideal of social equality because the society is stratified into social ranks along the 'esteem'-dimension of social status. Let me try to exemplify the connection between complex equality and material inequality by reference to the issue of dominance: As we saw, dominance occurs when one group can use its high ranking in one sphere (most notably economic activity) to improve its ranking in other spheres such that this group categorically outranks others. Now one strategy to prevent the occurrence of dominance is to uphold a strict distinction between different spheres. This is the strategy that Walzer pursues when he defines different kinds of 'blocked exchanges' that should be prevented.[54]

But it seems to me that realistically, we should expect that the phenomenon of dominance can be curtailed only imperfectly by keeping spheres of esteem as distinct as possible through the blocking of exchanges.[55] If this empirical assumption is true, then the obvious consequence is that we should seek to equalise at least the level of dominance that each person can exercise across the spheres, i.e. we should limit inequalities in the sphere that will allow some to become dominant across different spheres. Pursuing this strategy will require to keep material inequality quite limited. Moreover, and quite crucially, this reasoning does not merely give us reason to equalise wealth and income at the lower level of the distribution of income and wealth, but it

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[53] However, this point raises difficult questions about how equal power needs to be spelled out precisely: does social equality require equal opportunity for political influence or equal power *stricto senu*? Unfortunately, space does not permit me to analyze the issue in more detail.
[54] (Walzer 1983: 100-103)
[55] (Swift 1995; Waldron 1995)

equally applies between those relatively well off in terms of income and wealth and those extremely well off. Thus, a concern with the recognitional aspects of social equality does not merely point in the direction of reducing the distance between the worst off and the median income-earner to prevent stigma (as the discussion of 'bottom inequality' suggested), but it also speaks in favour of reducing overall economic inequality to prevent the occurrence of dominance and uphold the value of complex equality.

A final point in relation to the recognitional aspects of equal esteem comes from Brian Barry and relates to pre-eminence: Barry suggests that there is a fairly robust empirical finding that materially unequal societies have a tendency to fetishize income and wealth and the status of those who have it at the expense of other forms of achievements: "The more unequal a society becomes in terms of income and wealth, the more the connection between wealth and status is tightened, so that people who make valuable contributions to the life of the mind, to the arts, or to the well-being of their fellow citizens (teachers and nurses for example) tend to be accorded relatively low social standing unless they also make money. At the same time, those who make large amounts of money without any of those achievements have become objects of admiration."[56] It is not clear whether the causal link runs from excessive materialism to socio-economic inequality or the other way round, as Barry suggests. But *if* the link runs from economic inequality to pre-eminence, then one sound strategy to uphold a pluralism about various spheres of achievements is to prevent the occurrence of economic inequality.

What institutional suggestions follow from this third argument about the dependence between economic inequality and equal status understood in terms of complex equality? At least one important consequence is that we have additional reasons to insist on more economic equality than the initial principle of distributive justice, the difference principle that permitted incentive-based inequalities, suggested.[57] For

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[56] (Barry 2005: 182)

[57] Rawls himself may be able to circumvent this conclusion because he includes the social bases of self-respect amongst the primary goods that need to be distributed according to the difference principle (Rawls 1999c: 79) .

example, if some law would lead to a minor improvement in the position of the worst off group in society but would massively boost the economic preponderance of the extremely well off and thereby make it likely that dominance and pre-eminence were exacerbated, then our concern for social equality might trump our fairness-based distributive principle.

2.6 Conclusion

Let me briefly summarize the points I have made in this chapter: I have first argued that social justice concerns the distributions of primary goods amongst those subject to a social and political order. More specifically, I insisted that concerning the primary goods of income/wealth and opportunities, there is a benchmark of equality that principles regulating basic social institutions must respect in the form of comparative distributive shares and fair equality of opportunity. I have then argued that an egalitarian conception of the social ideal that should govern society also imports requirements into social justice by demanding an unconditional basic level of material subsistence, and by restricting material inequality potentially in situations where purely fairness-based considerations might sanction them. Thus, the account of social justice presented here is pluralist in the sense that there are various kinds of reasons that support an egalitarian account of social justice. Some of the reasons we have stem directly from considerations of fairness that apply to institutions, whilst others shape our convictions about the states of affairs measured in terms of distributions of primary social goods more indirectly by way of considering the kinds of relationships that we want to see realized amongst persons sharing a social world.

The case for such a pluralist account of social justice presented here is necessarily sketchy and impressionistic. I do not claim to have argued for the content of social

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It is an interesting question whether Rawls thinks that the primary good of self-respect is more basic than others (he says, after all, that "self-respect and a sure confidence in the sense of one's own worth is perhaps the most important primary good" (Rawls 1999c: 348), yet he also states that "How heavily this good [self-respect] and others related to it should count in the index is to be decided in view of the general features of the particular society" (Rawls 1999c: 318)). It also seems to me that whilst the preservation of self-respect may on a Rawlsian account support the reduction of inequality at the bottom, whether the more fraternity-based reasons to prevent pre-eminence and dominance of esteem can easily be included in his account of distributive justice is less clear.

justice from first principles, nor indeed that I have captured all the reason that we may have for favouring a social and political order that respects the principles I have outlined. But what I hope to have achieved is a sufficiently clear presentation of the content of social justice and its connection to an ideal of social equality together with an explanation of the various reasons we have for favouring these, that we can now move on to the core task of this thesis, namely to evaluate which of these reasons (and consequently which of these principles of social justice) equally apply to the special institutional arrangement under consideration here, namely the EU.

Chapter 3

Normative EU literature, Social Justice, and Legitimacy

3.1 Introduction

The previous chapter presented a conception of social justice according to which direct and indirect considerations favour an equality-inclined distribution of primary social goods and fair equality of opportunity. The natural task for this thesis would now be to analyse which of these considerations may apply to the EU. But before this analysis can get off the ground, a preliminary 'external' challenge to my project must be addressed: the very endeavour of developing a conception of social justice will attract criticism from theorists in the discipline of European Studies. Within this field, the prevailing view is that whilst we need to study more thoroughly questions of political morality to which the EU gives rise, standards of social justice analogous to the 'substantial' principles that govern domestic society are inapplicable to the EU. Only input-standards, concerned with democratic legitimation, are admissible. This chapter addresses this influential body of EU literature and argues against its overwhelming opposition to the type of normative analysis pursued in this thesis.

A first section sketches the tendency amongst EU scholars to discuss normative questions solely in terms of legitimacy and democracy, and shows that this tendency stems from an implicit (and sometimes explicit) prior theoretical conviction that social justice assessments are misconceived for the EU. I then try to make sense of this prevailing view by analysing in more detail what these scholars take themselves to refer to when they engage in discussion of normative legitimacy; how their positions relate to prevailing conceptions of normative legitimacy more generally; and why they assume that it would follow from their theoretical commitments that justice should be excluded. The subsequent two sections argue that neither of the two dominant conceptions of EU legitimacy support the view that theorizing social justice for the EU is misconceived. In section four I turn to those arguing for improvements in 'input'. This is normally understood to require either more direct democratic participation by EU citizens

(claimed by European federalists) or limiting the institution's power, e.g. by a return to the requirement of unanimous state consent (by Eurosceptics). But this aspect of the normative EU literature is best understood as a response to the challenge that the EU lacks political authority or the legitimacy to enforce EU directives, that is, a right to rule that corresponds to a duty of obedience amongst subjects who reasonably disagree. I argue that this endeavour addresses normative concerns that are quite distinct from those of social justice. Whichever of the various concerns falling under the label of 'input legitimacy' one is addressing, there is a logical gap between arguing that such assessment is essential and the further claim that we need not or should not theorize what would constitute optimal - just - institutional outcomes.

In the fifth section, I look at two versions of a different conception of EU legitimacy, namely 'output' legitimacy. My argument is that focusing on output legitimacy bars one from seeing legitimacy as a response to disagreement about justice amongst subjects, or from thinking that an institution's legitimacy is equivalent to a comprehensive right to rule. Rather, I contend that the concept of 'output' legitimacy is more suitably understood as a version of what I call social justice. However, the commonly used account of 'output legitimacy' in the EU literature is an inadequate account of social justice because it frequently does not move beyond purely aggregative assessments of institutional outcomes. Thus it lacks a crucial aspect of social justice judgements, namely that these make interpersonal comparisons between agents.

3.2 The focus on Legitimacy in the EU Literature

Political philosophy uses many different concepts to evaluate institutions normatively. If we think about the state and its various features, philosophers seek to formulate our best understanding of, e.g. such ideals as democracy, the rule of law, the protection of basic rights, or a fair distribution of benefits and burdens amongst subjects, and then to evaluate how existing institutions measure up to these different ideals. Evaluating political institutions against such a variety of moral standards seems both theoretically sound and practically important. There is, after all, no guarantee that, for example, a state organised according to the rule of law is also necessarily democratic or realises a

fair distribution of benefits and burdens amongst its subjects. There is therefore a strong *prima facie* case for wide pluralism regarding standards of normative institutional evaluation – and so the fact that legitimacy is the dominant value presently used to evaluate the EU's normative status by EU scholars does not seem to stand in conflict with the view that we *also* need to assess the EU in terms of how well its basic institutions measure up to standards of socio-economic outcome-oriented social justice.

But unfortunately, this is not how many participants in discussions of the EU see it. Many consider the focus on the two normative concepts of legitimacy and democracy not merely an expression of the particular moral concern that unites them, but take it to derive from a prior theoretical agreement according to which developing principles of social justice for the EU is not a worthwhile enterprise. To name but a few examples: One of the most prominent commentators on EU institutions, Giandomenico Majone, argues in his most recent book that distributive social justice can only permissibly be implemented when there is a homogenous national demos and hence "in a transnational federation all such [redistributive] policies have to be excluded from the public agenda as being too divisive."[1] Second, Danny Nicol appears to formulate the mainstream response when he argues that "justice is simply too controversial to be identified other than through democratic means."[2] Agustín Menéndez makes this point even more explicitly when he says that "there are good reasons to think twice before enthusiastically endorsing *justice über alles* in general; and, more particularly, that promoting justice (...) on anything European is a bet not devoid of high (political) risks. Better not."[3] Of course, these are only a few examples, but my contention is that throughout much of the EU literature it is assumed that theories of social justice should play no role in the institutional assessment of the EU, and that this is assumed without discussing in more detail the conceptual relation between issues of legitimacy, democracy, and social justice.

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[1] (Majone 2005: 190)

[2] (Nicol 2012: 2)

[3] (Menéndez forthcoming: 1). For a discussion of Menédez's position, see (Nicolaïdis & Viehoff forthcoming)

The most prominent reason why justice is eschewed as a standard of assessment is that disagreement about principles of social justice is deeper and more widespread across the EU than within a nation state. But unfortunately there is no further explanation of the moral significance of this purported empirical fact.[4] This absence is particularly deplorable because only a sustained discussion of the normative significance of disagreement can shed light on how it influences the applicability of *any* normative standard of evaluation, whether legitimacy or democracy or justice. So it often remains unclear on what grounds social justice assessments are excluded: sometimes the argument appears to be that social justice simply does not apply in supranational contexts, that it is somehow a 'category mistake' to insist on its application. At other times, the argument seems to be that attempts to implement a conception of social justice would violate legitimacy or democratic procedure, understood as side-constraints on an outcome-oriented account of social justice. But to make such claims, one needs to say much more about the relationship between these values than is done presently in the EU literature. Given this lack of conceptual clarity, I start with a brief discussion of some aspects of the concept of legitimacy.

3.3 Conceptions of legitimacy

Legitimacy is a contested concept: when individuals disagree about questions of legitimacy, they frequently also disagree about what it is that they disagree about.[5] To see how different theorists define normative legitimacy, we can distinguish between the question of (i) what moral standing legitimacy confers on an institution and (ii) what establishes an institution's legitimacy. Starting with (i), what is claimed when it is said that an institution is legitimate? Normative legitimacy with which we are concerned here indicates, broadly, the existence of a particular moral relationship between an institution or a political order -or an agent holding a position in an institution or political order- and its subjects or third parties. How we specify "moral relationship" leads to different conceptions of normative legitimacy.

[4] An exception to this is (Ceva & Calder 2009).

[5] See e.g. the discussion of this point in (Applbaum 2010).

The traditional understanding of legitimacy takes it to be a right to rule on the part of the institution. For example, Buchanan describes what he calls the dominant philosophical view (DPV) concerning the legitimacy of a state: state institutions are legitimate only if they are justified in wielding power, if they create content-independent and exclusionary reasons for compliance and subjects owe obedience *to* the institution (when subjects fail to obey, they *wrong* the institution). Moreover, a legitimate institution may enforce its rightful claims against its subjects – which includes the use of coercive means- and its legitimacy is exclusive, i.e. it is morally entitled to exclude competing claims to legitimacy over subjects.[6] Simmons agrees when he avers that a state's legitimacy consists in "the complex moral right it possesses to be the exclusive imposer of binding duties on its subjects, to have its subjects comply with these duties, and to use coercion to enforce the duties."[7]

The fact that Simmons speaks of a 'complex moral right' already alludes to the fact that we may 'disaggregate' this right in different ways, thereby arriving at different, less comprehensive conceptions of legitimacy. Three important dimensions along which we might do so are the following: One weaker account of normative legitimacy sets the bar lower in terms of morally justified claims that the institution must have against subjects. Applbaum argues that a minimal understanding of legitimacy is that an institution has a *moral power* over subjects, which means that it may establish rules that impose or revoke duties, permissions or powers and thereby change the normative situation of subjects.[8] For an institution that has such power it need not be the case that when the institution issues directives to its subjects, subjects owe the ensuing duties *to that institution*. A second way in which our understanding of legitimacy could be weaker than the DPV is if we distinguish more precisely between different addressees of legitimacy claims: we may usefully distinguish between a power, or a right to obedience, held over the state's subjects, from a right against interference held against third parties. Thirdly, Buchanan's discussion includes a conception of legitimacy that is in a different sense weaker than the DPV: when an institution is legitimate, it is morally justified to

[6] (Buchanan 2010: 82)
[7] (Simmons 2001: 130)
[8] (Applbaum 2010)

wield political power, which he interprets as being morally justified to "attempt to exercise a monopoly, within a jurisdiction, in the making, application, and enforcement of laws."[9] Buchanan thus loosens the connection that the notion of a right to rule established between the institution and its subjects in such a way that legitimacy need not be authoritative.[10]

Is there anything that unites all these accounts of legitimacy? Since legitimacy is generally understood to be a standard for evaluating *political* institutions, most accounts implicitly or explicitly acknowledge that legitimate institutions have a moral entitlement to ultimately enforce their morally justified claims against subjects. This 'political' element of legitimacy, described in much detail by Max Weber in his seminal work on legitimacy, is not a necessary conceptual feature – but it is generally assumed to be an essential component of real-world institutions that enjoy legitimacy. So whilst a permission to use coercion may not be the key distinguishing feature of legitimate institutions (nor of course need it be the predominant modus operandi by which existing institutions ensure compliance), the issue of what may justify coercive enforcement always lurks in the background of discussion about normative legitimacy.[11]

3.4 EU Literature on Legitimacy: Theorists focusing on 'Input'

The task of this section is to show how existing accounts of legitimacy in the EU literature map onto theoretical distinctions and to discuss whether they can demonstrate that justice should not be a goal in theorising the EU. I contend that they cannot. First, I show how each account supplies a standard for evaluating the EU's institutions (and provides an assessment as to how legitimate EU institutions actually are). Thus what has gone under the label of 'input legitimacy' in the EU literature corresponds to either of two accounts of legitimation (that is, what renders an institution legitimate): Those arguing for more direct democratic (i.e. citizen) participation on the EU level follow the

[9] (Buchanan 2002: 689-690)

[10] There is a further issue of who has the right to fill various offices (office holder legitimacy), which may also be thought of as a matter of legitimacy. But since it is not central to the discussions at the EU level, I set this aside for the following discussion.

[11] (Weber 2002)

path of legitimation through democratic authorisation. By contrast, those arguing that the move away from procedures in which each state has a veto has reduced the EU's legitimacy implicitly rely on a consent-based legitimation strategy, at least insofar as supranational institutions are concerned. The key point with these accounts for the purpose of this chapter is that they are essentially competing claims about the EU's legitimacy understood in terms of a right to rule, which is fully compatible with also evaluating the EU in terms of an (outcome-oriented) standard of social justice.

By contrast, theorists who locate the EU's legitimacy in its 'output', rely on a 'weaker', instrumentalist legitimation that results from 'objective' benefits of the EU. Instrumentalist accounts reduce the distance between justification (and justice) on the one hand and legitimacy on the other because they must rely on an outcome standard to determine which institutions count as sufficiently just to have a moral right to wield political control and use coercion. Like outcome-oriented social justice, they are therefore open to the charge of insensitivity to disagreement at the EU level. To avoid this charge they must inevitably fall back on modes of justification that rely on procedures or actual authorization in the form of consent or democracy.

3.4.1 Input legitimacy: State Consent and *Democratic Deficit*

'Input legitimacy' describes the idea that an institution's legitimacy ultimately depends on the way in which those subject to its decisions authorize it. The two most common transactional legitimation strategies are (a) consent and (b) some forms of democratic authorisation. Each of these two has defenders when it comes to the question of the EU's legitimacy, though recently theorists have largely focussed on analysing the conditions and requirements of democratic authorisation in the EU context.

3.4.1.1 Consent as a ground for EU legitimacy

Those appealing to consent think of consent amongst a small set of collective agents, namely the EU's member states. Understood in this way, *EU legitimacy* is first and foremost legitimacy from the perspective of each state, ensured through consent. The

objection that legitimacy at the level of collective agents is not the same as legitimacy from the perspective of each individual citizen in an EU member state is then countered in a second analytical step in which it is shown that each of the collective agents is constituted in a way that ensures its own legitimacy. In the light of all the familiar difficulties with legitimating the state to its subjects via consent, that second step does not normally *also* rely on consent – so the application of the idea of consent to the EU case is at best a weak application of the idea: it argues that legitimacy can result from consent in some instances; it cannot make the stronger claim that consent is the only way to ensure an institution's legitimacy.

Why should we think that consent can establish legitimacy, and under what conditions may it do so? It seems intuitively plausible that, when we consent to be bound by someone's decisions, that act of consenting ordinarily creates a content-independent reason for us to obey that person's directives. Should we conclude that by analogy, when a group of people consent to be bound by an institution's decisions, the institution is therefore legitimate? This proceeds too quickly: to understand how consent relates to legitimacy, we need to understand what moral reasons motivate the idea that individuals can become subject to legitimate institutions by consent. Christiano, following Raz, argues that we can distinguish between three such grounds:[12] The first, most prominent, ground relates to our basic notion of an agent's freedom not to be bound unless one decides to be bound. Adult human beings possess an irreducible moral right to be their own master and to become subject to authority only through their own acceptance.[13] The idea of consent as the basis of all obligations chimes well with this fundamental endorsement of an agent's freedom. Of the two further grounds in support of consent as a strategy of legitimation, one is that consent helps to maintain a kind of basic equality amongst agents: "unlike relations between parent and child, the relation between two adults is normally a relation among equals, which only consent can change. But consent does this by preserving the basic

[12] (Christiano 2012), (Raz 1986)

[13] "The natural right in question here is the *natural right of freedom*, the right to act as one chooses within the limits of *natural law*, without interference (in the form or coercion or restraint) from others." (Simmons 1979: 63)

equality."[14] The third ground is accountability. Christiano illustrates this by the example of individuals consenting to be bound by a private association in domestic society: consent to a voluntary association endows agents with a power to hold the association accountable; if they feel that the association does not act as they intend, they can withdraw from its authority. The general point is that we can only see consent as a viable strategy of legitimation if we (a) take one or more of these three grounds to be valuable and (b) think that in a given case, allowing consent to establish legitimacy is in fact sufficiently grounded in these values.

If we consider the three grounds for favouring legitimation via consent, to wit, the protection of freedom, the equality of agents, and the accountability of the institution, then we can easily see that the idea of consent being the basis of legitimacy in the case of the EU as an intergovernmental institution has some initial plausibility, or, at least, that in the case of the EU all three grounds can be invoked: in particular, consent's ability to ensure the EU's accountability towards member states seems prima facie plausible, which makes the persuasiveness of the consent argument for the EU very different from the case of consent as a basis for citizens to incur obligations towards their state. As a rule, citizens lack the ability to sanction or credibly threaten to sanction their state with non-consent, whilst EU member states' threats to withdraw or disobey are (reasonably) credible and can therefore help to control that institution.

But if consent has been the 'traditional' basis of the EU's legitimacy, then the more recent introduction of non-consent elements threatens its legitimacy: qualified majority voting at the EU level has *reduced* the institution's legitimacy because the EU is now less accountable to each individual member state.[15] Moreover, majority voting that corresponds to the size of population reduces legitimacy because it results in a loss of equal standing to smaller member states, which the original method of consent protected. Finally, one could think that moving away from consensus decision-making

[14] (Christiano 2012: 7)

[15] My point here is not to provide a principled account of the EU's legitimacy as it *might be*, but merely to point to some of the disagreements amongst EU scholars who focus on the actual present political design of this institution.

also impacts the third central value that grounds consent theory, namely freedom: under majority voting, each participant faces the risk of being outvoted and still having to comply, which one may think limits that agent's freedom. It was, for example, this claim that qualified majority voting at the EU level undermines the German people's right to political freedom in the form of self-determination ("that all state authority emanates from the people") which formed part of the judicial review that led to the German constitutional court's famous Maastricht ruling in 1994.[16]

It should be noted at this point though that consent as the basis of the EU's legitimacy has declined as a position that has widespread appeal amongst theorists, mainly for two reasons: The first is that even if we continue to take the intergovernmental level of collective agents as the relevant domain of legitimation, progressively deeper integration and the ever increasing number of issues that the EU regulates for member states make it less and less conform to the voluntary association model imported from domestic society. If EU membership appears increasingly non-voluntary (e.g. because exit costs are too high or because the consequences of membership are increasingly unpredictable), then consent would be as weak a ground for legitimacy in the intergovernmental EU case as it would be in the domestic case.[17] The second reason is that the EU has taken on a much more hybrid form of governance than the collective agent model suggests. For one thing, the EU implements directives that are addressed directly to each member state citizen (rather than to their state first), which makes them look much more like the commands of a sovereign to its subjects than the rules of a supranational agency.[18] For another, citizens are called upon to exercise, and to some extent do exercise, political power at the EU level through direct democratic elections of representatives in the European Parliament.

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[16] For a critical discussion, see (Pogge 1997).

[17] The relevance of non-voluntariness is further discussed in chapter five.

[18] On this point, see the discussion in (Eleftheriadis forthcoming).

3.4.1.2 Democratic legitimacy and democratic deficit

The amount of literature dealing with the EU's democratic legitimacy (or the lack thereof) is vast, and it is not the purpose of this chapter to discuss it in all its details.[19] The point here is only to show what kind of normative claim is at stake when it is debated whether or not the EU has a *democratic deficit*, i.e. how accounts of democracy at the EU level relate to the question of legitimacy. A first step towards understanding the democratic deficit literature is to see it as a debate about the empirical conditions that need to be in place for the institutional features of democratic rule to realise the values that underpin our commitment to democratic legitimation: if democratic decision-making can realise these values only if all participants have roughly equal stakes in matters to be decided, or if there are no persistent minorities, or if democratic institutions require other forms of identification or voluntary associations amongst subjects, then introducing democratic institutions at the EU level in the absence of these empirical conditions might be ill-conceived, for it would confuse the democratic method or procedure with the normative ideals underpinning it.[20]

But the *democratic deficit* debate is not only complex because these functional requirements of the demos are difficult to assess empirically. The difficulty is deeper than this because there are substantive differences between possible ideals in which democratic legitimacy may be grounded. One plausible way to understand democracy's value is to see it as the unique way of realising a republican ideal of freedom or public equality amongst subjects. This contrasts with a more liberal grounding, according to which democracy is valuable for its tendency to produce acceptable outcomes, defined e.g. in terms of the protection of individual freedom against the threat of tyranny. Although these various underlying values mostly converge on a common set of constitutional and democratic principles in the traditional case of the nation state, there is no guarantee that the best procedural instantiation for each may also converge in the more complex supranational case of the EU.[21]

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[19] (Follesdal 2006b, 2007) provides a good overview over the more recent debate.

[20] A similar distinction is drawn in (Miller 2009a: 204).

[21] One may argue that already in the nation state case, there is significant tension between the liberal and the radical ideal; for a discussion, see (Miller 2008)

Those insisting on the existence of a democratic deficit generally do so from an intrinsic or Republican account of democratic legitimacy: First, there is no powerful display of public equality amongst citizens of the EU. Although there is a parliament, it not only lacks the decisive power to determine basic aims of policy, but also fails to adequately engage subjects such that they can see themselves represented in its decision-making processes. The actually decisive decision-making bodies, i.e. the Commission and the Council, are either undemocratically appointed (Commission) or highly unequal in the distribution of power among their members(Council). Second, there is at present no democratic deliberation amongst citizens; people are not sufficiently moved by European issues and where they are, deliberation only takes place within domestic contexts.[22] Moreover, those valuing democracy intrinsically complain that the transfer of power to the EU level has often led to a shift in actual decision-making from the legislative to the executive power on the state-level.[23] Lastly, it may be argued that if the value underpinning democratic procedures is the *public* recognition of participants as equals, then highly complex institutional arrangements and decision-making procedures will almost inevitably fail to realise this value. Put together, these 'radical' or intrinsic defenders of democratic procedure will see reductions in public equality as a quite profound violation of the values that democracy is meant to instil amongst those subject to an institution and on most plausible readings, the EU therefore does suffer from a rather severe democratic deficit at this point in time.

3.4.2 Input Legitimacy and Social Justice

Does this brief discussion of input legitimacy in either the form of consent or democratic authorisation imply in any straightforward sense that in theorizing the EU, we should focus *only* on legitimacy and keep away from thinking about substantively just outcomes? A first point to note is that there is no straightforward theoretical connection between preferring particular forms of input legitimacy at the EU level and opting for or against a particular account of substantive justice.

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[22] (Beetham & Lord 1998).

[23] See the summary of arguments in (Follesdal & Hix 2006: 534-537).

Perhaps the indirect claim here is that (a) there *cannot be agreement* concerning a particular conception of social justice at the EU level and therefore (b) when we try to develop a public political morality for the EU that can inform political discussion and public policy, we should refrain from including substantive concerns of social justice because this is more likely to undermine whatever little coordinated moral purpose there currently exists in the EU.

A first response to this is the following: even if developing an account of 'EU social justice' *does* deepen our disagreements (and it may not), then this is not a problem if legitimate institutions can (and are indeed meant to) help us go on together *despite our disagreement*. Secondly, it strikes me that this claim both overestimates the real-world impact of normative theorising, and, more importantly, that it confuses the evaluative purpose of judgements about justice with the evaluative purpose of judgements about legitimacy: as we saw, (input) legitimacy provides guidance on what kinds of transactions by agents create obligations to obey an institution's (and its agents') directives and when an institution has a stringent right to rule that includes the right to force individuals into compliance and to exclude third parties from interference, all against the background of disagreement.

The aim of theorising social justice is a quite different one: it is to describe the fundamental aim or aspiration of social organisation.[24] Or, to put it more bluntly: (input) legitimacy has to do with who can exercise what power. But it does not tell us to what ends that power is to be exercised. So we need a story about that – and that story is given to us by a conception of social justice. What partly explains the reluctance or sometimes even hostility to assessments of EU policies in terms of social justice, I contend, is the assumption that any proposal for re-organising the EU in terms of social justice is taken to imply that those making such proposals are thereby endorsing the view that *whoever can is justified in coercively enforcing what justice requires.*[25] But at least for those endorsing an input-based account of legitimacy, that assumption is deeply mistaken.

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[24] A similar point is made in (Sangiovanni 2012c: 5)

[25] This, notably seems to be Menéndez main fear. (Menéndez forthcoming)

A final consideration is this: If we make our vision of what a fully just supranational institution like the EU would look like too dependent on the (real or imagined) current lack of agreement about justice in the EU, we not only run the danger of losing whatever critical edge normative philosophical analysis has, but we also unnecessarily end up collapsing two important evaluative standards -justice and legitimacy- into one.

3.5 Output legitimacy

I now turn to the prominent idea of 'output legitimacy' as the most adequate standard for normatively evaluating the EU. The general idea of 'output legitimacy' is that the legitimacy of an institution can be established by showing that the institution generates positive outcomes that would not otherwise be attainable, or that the particular arrangement does generate these outcomes in a way that is more advantageous than relevant alternatives: we do not always need input legitimacy to show that an institution enjoys legitimacy. For example, Beetham and Lord, after discussing the lack of social solidarity amongst Europeans and the structural problem of democratic rule in transnational settings, ask whether the EU might instead "justify its powers on the utilitarian grounds that certain fundamental needs and values can only be met by a European structure of governance?"[26] They answer the question at least partly in the affirmative and argue that the EU ensures pareto-optimal supply of a number of public goods and social and political rights compared to individualised provision by each member state. In their eyes, legitimacy is enhanced when government policy is such that "all members of society should, in principle, be capable of benefitting."[27] Thus, more efficient supply of a good entails more legitimacy compared to the less efficient solution, because "it should always be possible to (...) compensate those who had to change their ways and *still* enjoy some social return on the more efficient use of resources."[28]

Fritz Scharpf, the originator of the term 'output legitimacy' in the EU context, also argues for this form of institutional justification when he describes how the EU's unique

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[26] (Beetham & Lord 1998: 94)
[27] (Beetham & Lord 1998: 97)
[28] (Beetham & Lord 1998: 97 emphasis in original)

"problem solving capabilities" in the provision of central public goods account for its legitimacy. The idea is that EU member states increasingly lack the ability to ensure important welfare state related functions by acting independently and insofar as the EU can ensure that these welfare-related outcomes are secured, this makes the EU legitimate.[29] Many other writers, e.g. Moravcsik, Schmidt, Menon and Weatherill, also advance the idea that the EU is legitimate because it creates positive outcomes that each individual member state could not realise by itself.[30]

3.5.1 Output Legitimacy: Two understandings

Before proceeding, we need to clarify the structure of the 'output' argument, i.e. we must explain first what conception of legitimacy could be underpinning it and, second, what it is that makes a relevant outcome count as sufficiently good to legitimise the EU in this way. The essential point in relation to the first is that output legitimacy can only plausibly refer to weaker forms of *institutional* legitimacy, i.e. it can explain why EU member states citizens should follow the rules of the EU as an institution, not, I think, why a particular set of agents has an exclusive claim to be in charge of uttering the relevant directives (*office-holder legitimacy*). The only way to establish the latter would be to show that this particular set of agents is best placed to create the correct output, but that, I take it, is not normally the argument made by defenders of output legitimacy: ordinarily, the claim is merely that an advantageous or morally required form of output requires coordination at a European level, not that a particular set of agents should be in charge of defining these at the European level (I say more about the role of experts and independent agencies below).

One might object to this initial point in the following way:[31] Imagine that some morally crucial task needs to be performed and that through chance, some person **P** is presently carrying out that task. Should we not assume that **P** is justified in exercising legitimacy

[29] One set of reasons he offers simply stems from "international developments beyond their [the states] control", another stems from the "second-order consequences of the very success of European integration." (Scharpf 2003: 18).
[30] (Menon & Weatherill 2008; Moravcsik 2001, 2004; Schmidt 2012)
[31] I thank David Miller for suggesting this point.

to fulfil the task so long as nobody has shown that there is a clearly better alternative? And if yes, does that not show that output legitimacy may well establish office holder legitimacy? I think this objection can be put aside for the following reason: Based purely on the thought of output legitimacy, there is no reason to assume that a person presently filling some office enjoys legitimacy. Output is indifferent between P continuing to hold the position and someone else's replacing her – as long as they are equally good. So the only way in which an output argument could establish that she must stay in power is that she would be *best* placed to realize the relevant output value.

But of course, the crucial question is by what outcomes an institution's legitimacy needs to be assessed. Here we should distinguish between two separate (though frequently conflated) conceptions of output legitimacy . The first simply assumes that a given list of objectively defined outcomes is valuable and matters for an institution's legitimacy. The second position is weaker in that it merely asserts that once a set of outcomes has been established as valuable (e.g. through a democratic process) certain ways of realising these outcomes are uncontroversially better than others. More technically, these two definitions of 'output legitimacy' are the following:

(a) X produces outcomes Y that are *independently valuable*, i.e. Y is valuable independent of whether or not those outcomes match aims formulated by transaction-dependent forms of legitimation (calls this the *substantive outcome interpretation*)

OR

(b) X is *efficient* in producing outcomes that match aims formulated by transaction-dependent forms of legitimation when compared to relevant alternative arrangements for the provision of those outcomes (calls this the *efficient outcome interpretation*)

Which of these two conceptions of output legitimacy we adopt has important consequences for the normative work that the idea of output legitimacy can do and what further arguments are necessary to establish it. If we opt for (a), output legitimacy may count as an alternative to the values of democratic procedures or consent underpinning 'input legitimacy' because it sees legitimacy in decidedly instrumentalist

terms. By contrast, if our intended meaning is (b), then output legitimacy is only a further necessary feature that institutions must fulfil in order to count as fully legitimate. This second reading makes it a hybrid between forms of legitimation that focus on actual transactions between institution and subjects (i.e. consent or democracy) and instrumentalist accounts of legitimation.

3.5.2 Substantive outcome interpretation

We can see hints at an interpretation of output legitimacy along the lines of (a) in Scharpf's argument that output legitimacy is "government *for* the people", i.e. government in the *public interest*, which he links to an adequate balance between market liberalism and social protection in the form of welfare state provisions.[32] For Scharpf, a bounded form of market capitalism is not merely valuable *because* it has traditionally been endorsed by democratic choice, but simply because it is the correct vision of what outcomes social institutions ought to bring about. We also find substantive outcome interpretations amongst writers who engage in the democratic deficit debate but value democracy merely instrumentally.[33] Whether an institution conforms to these 'correct' values depends on whether or not it has sufficient institutional checks and balances, safeguards and opportunities for the governed to hold those governing them accountable and to protect each against tyranny by either a governing elite or the majority.[34] Outcome legitimacy, according to this first reading, can and frequently does conflict with transaction-dependent input legitimacy and should, if necessary, outweigh our concern for the latter. For example, Moravcsik sees no problem per se in withdrawing institutions from 'one person, one vote' mechanisms that are underpinned by the ideal of public equality of citizens. For liberal-instrumentalist like him, maintaining accountability through competition amongst governance agencies on multiple levels of the EU is enough in a number of cases to realise the substantive goal. We see this not only in the supranational case of the EU but also in the organisation of domestic institutions, where concerns for substantive outcomes are thought to justify the exclusion of particular rules and institutional

[32] (Scharpf 1999)
[33] See e.g. (Moravcsik 2002: 606)
[34] For a criticism of the appeal to this 'neo-Madisonianism' in current EU debates, see: (Bickerton 2011).

arrangements from democratic decision-making: if shielding the central bank from democratic procedure is necessary to obtain preferable economic outcomes, then this is what we should do to ensure legitimacy.

The problem with the *substantive outcome interpretation* is the following: The claims about valuable outcomes that Scharpf's or Moravcsik's theories make are significantly more substantive and more likely to be controversial than the minimalist stipulations that other instrumentalist accounts of international and supra-national legitimation put forward, e.g. Buchanan's requirement for the respect of basic human rights. A position that takes it to be the case that institutions may systematically violate basic human rights is either crazy or vicious and therefore does not merit to be taken seriously amongst equals who disagree. By contrast, disagreement about the correct balance between economic opportunity and the provision of social welfare provisions or the degree to which certain institutions should be shielded from majority voting are exactly of the kind that well-informed and well-meaning citizens disagree about, they are in many instances at the core of what disagreement about social justice amounts to.

Thus, upon closer inspection, claims about *substantive* outcome legitimacy look very much like claims about social justice: Much like Scharpf's 'outcome standard', theories of justice assume a point from which to specify objectively valuable social states of affairs and stipulate how social institutions should be organised to ensure their realisation. Two things follow from this: first, that once we rely on the notion of *substantive* outcome legitimacy in our theorising, we can no longer appeal to the view that the facts of disagreement makes substantive theorizing about social justice futile. Second, that those thinking about the EU in terms of (substantive) outcome legitimacy would do well to engage with the literature on social justice that seeks to address these issues in a systematic fashion. So whatever the plausibility of this view, it presupposes the very judgments that theories of justice are meant to provide, and is no more immune than an account of justice would be.

3.5.3 Pareto-optimal implementation and its limit as source of legitimacy

The alternative version of output legitimacy, *efficient output legitimacy*, sees it merely as an additional desideratum of a full account of legitimacy. Defenders of this interpretation argue that accounts of democratic legitimacy must start with more realistic sociological assumptions about the modern state: the task of governing the various aspects of society is itself only possible where a substantial amount of administrative tasks is carried out by experts. But effective bureaucracy means that expert bureaucrats get to make decisions about how to implement input legitimated goals. So whilst citizens might democratically set broad goals or parameters for political and administrative aims, it is unrealistic to think that citizens can be in a position to determine what intricate rules should govern, say, financial derivative markets. Here, legitimacy can only be created when experts implement policies that are *efficient* in realising the citizen's goals. The EU, according to this interpretation, is akin to the bureaucratic machinery of effective states and it is this feature that accounts for its legitimacy.

A prominent defender of this interpretation of EU legitimacy is Majone, who captures his understanding of the EU in his formulation that it is a 'regulatory state' that implements democratic input in the same way that domestic agencies that are shielded from democratic decision-making do: they take a collective preference and realise it in the most efficient way possible.[35] Just to give an examples: electorates in European states quite clearly want environmental protection, yet arguably this good can no longer be provided at the national level because pollution in one country results in environmental degradation in another. So when faced with this democratically determined goal, government experts de facto have little choice but to 'scale-lift' their administrative machinery to the EU level. But this does not change the essential point, namely that they are bureaucrats who do little more than fine-tuning and implementing democratically legitimized goals. Moreover, it would be a mistake to make choices about the best administrative realisation of publically set goals themselves subject to

[35] (Majone 2005)

democratic decision-making: once a goal is democratically defined, expertise should be the trump card.

I think the efficient output position is sound, as far as it goes: democratically legitimated goals are often vague, yet bureaucracies must find justifiable ways of implementing policy. Efficient output legitimacy rests on the assumption that once we have legitimately identified a goal G, we have strong reasons to implement G through the most efficient policy P available. Although the efficiency condition for legitimacy specifies one amongst several *outcomes* as conducive to legitimacy, it does so on a sufficiently weak or neutral basis. However, we must consider two further points.

The first point is to clarify some ambiguities that exist in the way that the efficient outcome view is presented by its proponents. Some argue that it applies to 'efficiency-enhancing' policies, other argue that 'Pareto-optimal' policy solutions are relevant, or that output legitimacy might apply to cases 'where every loser can be compensated' or to problems for which 'only solutions at the EU level are possible'. These are all quite distinct from each other, so we must begin by distinguishing between the normative force of each. Let us start with the strongest case, which seems to be a policy that is input legitimated and can only be provided at the EU level. It seems plausible in this case to argue that the EU's provision is legitimate. But what exactly does this judgement amount to? In terms of the different conceptions of legitimacy we have observed, it can merely function as an institutional legitimation: it shows that we have strong reason to accept the EU as the institution to implement a policy because it is the only institution that could introduce this policy. In other words, we have not shown that any particular agent will enjoy office holder legitimacy to implement the outcome.

The more fundamental problem with efficient outcome legitimacy is that efficiency considerations can be applied 'neutrally' only to very a limited range of legitimate political goals: Suppose the goal in a constituency is to implement a cut in CO_2-emissions by 10% over the next decade. With this goal in mind, experts will then devise policies P_1 to P_n to achieve this goal. Suppose that financial costs are all that matters

from each person's perspective. Probably some strategies will be fairly unattractive in terms of the costs and benefits for everybody. But even if we leave out the obviously unattractive solutions, it is relatively likely that we will end up with a number of options, some of which will impose harsher cost on some parts of the population than others. Because they are all equally efficient, efficiency underdetermines which policy should be implemented in such cases, and it would certainly be a violation of input legitimacy if the bureaucrat simply picks his favourite one. The general point is that the "efficiency-frontier" may be rather long and which of its points we choose is a substantive political judgement subject to disagreement. Majone recognises the force of this objection to some extent when he argues that this form of output legitimacy can only be assumed to exist for public goods or when he states that only "efficiency-enhancing" policies, not "zero-sum re-distributive policies" can be legitimated in this way. But it remains unclear how this should solve the problem: the fact that each person stands to benefit from the existence of a policy relative to its non-existence leaves it open how the respective costs of providing the good are distributed, and the question of how burdens of providing the good are distributed becomes a substantive question once we realise that for (nearly) each policy that is 'effiency-enhancing' there are different cost allocations of providing it.[36]

The final point relates to the on-going character of democratic legitimacy: in order to ensure that the effective outcome view does not collapse into the substantive outcome view, democratic legitimation must be to some extent *on-going*, i.e. the goals for which the EU seeks efficient solutions must be open to amendment and re-definition by the relevant constituency. This point makes it hard to see how the position could warrant the claim of *permanently* excluding important institutions from considerations of input, which is essentially what output legitimacy theorists want to argue.
Perhaps the motivating thought behind shielding regulatory agencies from democratic rule is the assumption of inconsistent time preferences amongst democratic majorities:

[36] Other have criticized that the very distinction between efficiency-enhancing and re-distributive policies is untenable, see e.g. (Van Parijs 2011a chapter 8). I think the better point to make here is that *all* EU policies are (at best) Kaldor-Hix efficient, i.e. they would be pareto-optimal (and hence non-redistributive) only if the compensatory allocation to losers was part of the policy. But as we saw, this is not the case. For further discussion, see: (Miller 2004)

in the case of central banks, for example, it is often argued that although the majority has a long-term interest in a stable currency, it lies in the nature of democratic decisions that they will favour short-term gains over their actual long-term interest. For that reason, central banks must be independent from democratic politics.

Most are familiar with the concept of inconsistent time preferences, "weakness of the will", and strategies to bind oneself to create more optimal long-term results from personal experience. But applying this idea to the case of political outcomes slides over the huge difference between engaging in inter-temporal trade-offs amongst goods and bads within the life of one person and the trade-off in goods and bads for a group of individuals living in a society. Opting for independent central banks with specific inflation targets may increase the aggregate social output – but it does so by clearly distributing costs interpersonally (borrowers vs. lenders) and inter-temporally (cheap money now vs. higher interest rates in the future). Where there are distributive effects in implementing a particular Kaldor-Hix efficient solution,[37] it is difficult to see how arguing that this solution best serves the public interest is anything other than a substantive claim that violates democratic procedures, thus falling back on the substantive interpretation of output legitimacy.

In sum, I think that effective outcome legitimacy's scope of application is rather limited. In any case, it is more limited than what writers like Majone think. Fundamentally, it cannot ground the claim that these theorists ultimately want to defend, namely that certain institutional features at the EU level can be *permanently* excluded from democratic decision-making without losing their legitimacy. As a result, the principle can do rather little legitimating work for the EU as an institution: it can only fully evade the criticism against the substantive outcome view by essentially collapsing into a slightly more nuanced input + process account.

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[37] In fact, central bank independence might not even be a Kaldor Hix efficient solution: if the increased aggregate output is inter-temporally distributed, it is not obvious that all those losing out as a result of the policy could be compensated by the benefit it might create at a later stage.

3.6 Conclusion

This chapter has clarified some of the ambiguities that the focus on legitimacy and democracy has meant for the existing EU literature and argued for a position that permits asking questions of socio-economic outcomes as part of the questions for institutional design we are investigating. First, I have shown how input legitimacy often answers concerns quite distinct from considerations of social justice and should therefore not be mistaken as a view that aims to refute the requirement of input-independent evaluation of just political outcomes. Second, I have shown how 'output' legitimacy –insofar as it does not collapse into 'input' legitimacy- requires a more principled theory of which kinds of outcomes are independently morally acceptable. What limits the usefulness of present theorising about output legitimacy in the EU literature (independent of whether or not the better term to address it would be social justice) is the fact that it generally fails to move beyond the assumption that EU institutions are self-justifying because they could create Pareto optimal outcomes compared to their non-existence. But an acceptable theory of just outcomes must move beyond aggregate outcomes and compare different scenarios in terms of how individuals –rather than persons *on average*- fare under them.

There is nothing particularly eccentric about this position defended here. In fact, evaluating socially generated outcomes by way of interpersonal comparison is exactly the task in which nearly all (non-utilitarian) conceptions of distributive justice engage, so the present state of the EU literature, rather than my proposal to advance it, seems somewhat surprising. Thus, having established that a conception of social justice in the EU is required, I turn more directly to developing such a conception in the following chapters.

Chapter 4

Social Justice and the EU: Direct Transnational Arguments

4.1 Introduction

The question I answer in this and the following chapters is this: Do the grounds of economic justice sketched in chapter two apply to the special case of the European Union? To do so systematically, I begin by distinguishing four categories of arguments that speak in favour of *substantive* principles of economic justice at the EU level, i.e., principles that include a concern with relative economic shares and fair equality of opportunity amongst all EU citizens (Section 2). This chapter focuses on the first category, which I call *direct transnational* arguments. Sections three and four discuss the extent to which these arguments have purchase in the EU case. In particular, I work out in more detail the force of these arguments when applied to the EU as compared to nation states or global politics. The conclusion of this chapter is that at least some of these direct transnational arguments have *prima facie* force. Thus, to the extent that my argument succeeds, the position that the EU requires substantive principles of economic justice –including a more egalitarian distribution of the primary social goods of income and wealth and fair equality of opportunity- is rendered more persuasive.

4.2 Four kinds of arguments for substantive justice at the EU level

Chapter two defended the pluralist position that both direct arguments, i.e. arguments from fair social cooperation, as well as indirect arguments, i.e. arguments from the ideal of social equality, matter when we think about what social justice requires domestically. A similar strategy is pursued in this chapter in relation to the special case of the EU. But there is one complication that must be addressed first. In the EU context, arguments for comparative principles of economic justice and for equality of opportunity may rely on two quite distinct theses, which I will call transnational and internationalist arguments respectively:

> *Transnational:* The EU creates conditions that facilitate the existence of EU-wide social injustice (*transnational direct thesis*) or social phenomena that threaten the existence of valuable social equality amongst *all EU citizens* (*transnational indirect thesis*).
>
> *Internationalist:* The EU creates conditions that threaten the existence of social justice within member states (*internationalist direct thesis*) or social phenomena that threaten the existence of valuable social equality amongst national *citizens* (*internationalist indirect thesis*)

Transnational arguments for EU economic justice maintain that substantive principles are required because we have no good reason to distinguish Europeans living in separate states from one another in terms of how European institutions must treat them individually. For example, we might think that because every EU citizen makes an equal contribution to the surplus that the EU generates, each should receive the same share of this surplus– perhaps subject to considerations of efficiency. Arguments of this kind derive principles of distributive justice straightforwardly from characteristics of the EU's 'basic structure'. Transnational EU justice arguments can be *direct* (i.e. stemming from justice-internal considerations) or *indirect*, stemming from the relevance of economic inequality for social equality at the EU level. This last indirect transnational claim relies on a premise that obviously requires defending, namely that the ideal of social equality has purchase amongst EU citizens considered as a group.

But over and above direct and indirect transnational arguments to extend substantive principles of economic justice to EU institutions, there are also *internationalist* arguments of each type. An internationalist argument for extending principles of economic justice to the EU relies on less controversial moral premises. Thus, direct internationalist arguments maintain that realizing social justice *within each individual EU member state* is impossible unless we extend at least some principles of economic justice to the EU as a whole. For example, a direct internationalist argument is that in the face globalization, implementing anything approximating egalitarian principles of material resources and fair equality of opportunities within each single EU member state is all but impossible unless we design EU institutions and practices such that they

have substantive redistributive effects between them. Similarly, *indirect internationalist* arguments insist that domestic *social equality* is threatened and that guaranteeing social equality amongst co-nationals (*not* all EU citizens!) requires different and more substantive economic institutions at the EU governance level, possibly including re-distribution of resources between member states.

Internationalist arguments in favour of more substantive economic justice at the EU are based on more widely shared moral premises (i.e. the thought that domestic social justice and social equality are valuable), but combine these less controversial normative premises with more demanding empirical assumptions: first, empirical assumptions about the effect of globalisation and EU institutions and practices on domestic social justice and social equality; second, empirical assumptions about each individual state's (in-)capacity to counteract these problematic effects independently of EU institutions.

The main aim here is merely to motivate the idea that there is a strong prima facie case for subjecting EU institutions to requirements of social justice that are in important ways analogous to those we apply to the basic institutions of states domestically. In this chapter, I begin this task by assessing direct transnational arguments, that is, arguments that try to draw parallels between the EU's core institutions and the basic institutions of the state and to derive from these parallels egalitarian distributive principles that ought to be applied to all EU citizens. Direct transnational arguments can in principle motivate each of the elements of substantive economic justice that I described domestically, i.e. they can be advanced in favour of equality-inclined distributions of the primary goods of income and wealth (section 3) and they can be advanced to justify fair equality of opportunity amongst EU citizens (section 4). The intuitive idea is this: EU institutions and regulations directly influence distributions of primary goods in member states and affect the opportunities to reach positions of economic advantage for individuals throughout the EU. Since there are many indisputable parallels between state institutions and the regulatory architecture of the EU, there are strong reasons to conclude that broadly similar principles of social justice are applicable.

4.3 Substantive principles for outcomes of income and wealth

How can we assess the merit of 'direct transnational' arguments concerning the distribution of the primary goods of income and wealth? Recall that I offered three broad avenues of justification for egalitarian or comparative shares for income and wealth in the case of the domestic basic institutions, namely the fact of cooperation, the fact that an institution acts as an impartial distributor of goods and benefits for competing claims, and the fact that the state relates to those subject to its authority in specific ways (e.g. by coercively enforcing compliance). To get a grasp on these questions let us begin by contrasting the parallel between the EU and the nation state with similar arguments made in the context of debates about global justice.

4.3.1 Social Cooperation

The first disanalogy between the state and the institutional architecture of global politics on which critics of cosmopolitan global justice often rely is the fact that the former but not the latter is best seen as an instance of social cooperation. Samuel Freeman, drawing on Rawls' work, distinguishes social cooperation from other forms of human interaction and argues that social cooperation, but none of the other forms, brings into play the kinds of substantive principles elaborated in chapter two.[1] What characterises social cooperation according to Freeman are essentially three features. First, social cooperation refers to a scheme of interaction that continuously regulates how important goods for human flourishing are produced and distributed. Second, cooperation is voluntary and advances each participant's interests, at least over the time of cooperation. Third, social cooperation "involves an idea of reciprocity and fair terms of cooperation, which provide a sense of what is *reasonable*. These are norms that members of the cooperating group rely upon and use to guide their conduct and regulate the distribution of benefits and burdens among themselves. Moreover, the members mutually recognize these fair terms and refer to them not only to regulate but to criticize and assess one another's conduct."[2] It is this third feature of social cooperation that makes it different from purely strategic interaction and coordination.

[1] (Freeman 2007: 263ff.)
[2] (Freeman 2007: 266)

With the conceptual distinction between social cooperation and other forms of human interaction in mind, we can see, according to the 'social cooperation view', that domestic political conditions but not global ones trigger substantive requirements of social justice.

Whatever the merits of this anti-cosmopolitan argument are in the global case[3], it cannot justify a similar bar against substantive principles of social justice for the EU. In respect of each of the three features just mentioned, the EU seems closer to the domestic conditions of social cooperation than to the conditions of global politics. Let us consider these features in turn: The institutional architecture of the EU was built by member states and their citizens in the spirit of cooperation and with a view to generating various kinds of benefits for all participants. To offer just one piece of textual evidence, the Treaty of the European Union (TEU) states that the purpose of the EU is to form "an ever closer union" and (in sub-paragraph 3) that it therefore aim is to realise "economic, social and territorial cohesion, and solidarity."[4]

Of course, many international institutions will contain lofty pronouncements of a similar kind. But what sets the EU apart from nearly all of these is the fact that it has created a comprehensive legal structure and operational norms that to some extent enforces these ideals of fair cooperation. One indicator that states do believe that the EU should be governed by principles of fair reciprocity is the fact that they accept the provision of such things as structural adjustment funds, regional funds, and the newly introduced 'solidarity clause' in the treaty of Lisbon about mutual assistance.[5] Perhaps another indicator of this shared belief is the unprecedented fact that states have opted for majoritarian decision-making procedures in certain core areas of EU policy. Whilst there might of course be more profane explanations of this phenomenon (e.g. reasons stemming from the difficulty of reaching any kind of decision under a requirement of unanimity once the number of participating agents increases) I find it quite plausible to

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[3] Some criticism of the *general* idea of cooperation as a necessary condition for distributive justice is voiced in (Caney 2011; Valentini 2012)

[4] (European Union 2012)

[5] (Vandenbroucke 2013)

interpret this institutional choice also as an expression of the participants' trust that others do not use the institution merely strategically to rationally maximise their advantage. People will generally be only inclined to accept majoritarian decision procedures when they believe that others will act reasonably, complying with the reasonable demands of the majority when they are outvoted, and not abusing their privilege of power when they are in the majority. So there are good reasons to believe, I think, that participating states see their commitment to the EU as one of fair cooperation, and they likewise expect others to do so. Thus, contrary to the conditions to the conditions that some have argued obtain in global politics, the EU in fact is a cooperative scheme in the relevant normative sense that goes beyond merely strategic forms of interaction.

How about the second and the first condition? The EU is a supranational institution based on consent and voluntary membership on the part of member states. This is of course not the case for all EU citizens considered individually: even when states have democratically decided to participate in EU cooperation, all those who voted against membership are non-voluntarily subjected to the institution. But of course the same is true a fortiori for domestic state institutions. So it is in fact hard to see any respect in which individual membership in domestic society is more voluntary than individual membership in the EU. Similarly, the third condition of social cooperation seems equally fulfilled in the EU case: the best explanation why so many European states have joined the EU, and why a number of additional states currently take on the significant burden of changing their domestic economic and legal system to conform to the Copenhagen criteria for EU membership, is clearly that they expect significant permanent benefits from it. So all those relying on the Rawlsian argument about fair cooperation domestically should be drawn to accept that substantive principles of justice apply at least to those goods that the EU jointly provides because arguments about fair reciprocity apply in this context.

4.3.1.2 Fair reciprocity and substantive economic equality

If we accept that fair reciprocity cannot be excluded outright as a ground of substantive justice for the EU, this raises the difficult question about its requirements in this

context. We saw in chapter 2.4 that the cooperation argument maintains that egalitarian distributions of primary goods are required in the domestic context because each citizen cooperates in the joint provision of a comprehensive political and economic order. But to understand whether a similar concern for relative shares of the primary goods of income and wealth might obtain in the EU case, we need at first to understand more precisely what the object of fair reciprocity is and why fair reciprocity yields equal shares (or a principle that is equality-inclined in the distribution of such shares) in the domestic context. Andrea Sangiovanni, who has argued that fair reciprocity in the domestic case, grounds such substantive equality in primary goods, suggests that through the support and maintenance of state institutions, citizens provide one another with a number of essential public goods, namely freedom from "physical attack", "access to a legally regulated market", and "a system of property rights and entitlements."[6] It is the provision of these essential public goods, namely security and a legal regime of property, that make possible in the first place our lives "as citizens, producers, and biological beings."[7] So the relevant object or site of fair reciprocity in the domestic scenario are those two goods (nothing is lost, it seems to me, if we subsume a 'functioning market' and a 'regime of property and entitlements' under the heading of a "well-ordered basic economic structure"). It is in respect of these that citizens as beneficiaries owe those who collectively provide these goods duties of fair reciprocity. The basic notion of fair reciprocity to which Sangiovanni appeals is similar to H.L.A. Hart's principle of fairness: "when a number of persons conduct any joint enterprise according to rules that restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefitted by their submission."[8]

The essential public good of physical security

Let us look at the two key essential public goods that Sangiovanni mentions in turn, starting with physical security. Whilst it is of course true that states provide direct physical security through their various law enforcement agencies, it does not seem

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[6] (Sangiovanni 2007: 20)

[7] (Sangiovanni 2007: 21)

[8] (Hart 1955: 185)

strictly speaking true that states do so uniquely or unilaterally. A citizen's basic physical integrity of course depends on the existence of a working system of protection and policing in the place where he or she lives. But physical security is equally jeopardised by more macro-level phenomena, most notably inter-state war, global environmental degradation, and so forth. Focusing here on the former, it seems highly questionable whether the avoidance of the public bad of war is provided for by each state separately: just contrast a world in which each state stands in a Hobbesian state of nature to every other with the one we actually inhabit. The existence and functioning of a legal order in which "most states obey most laws most of the time" is indeed a crucial background condition for the physical integrity and security of each state's citizenry. Now at least historically, the EU has been primarily understood as a 'peace project' for the European continent, which had experienced more than its fair share of war in the two generations prior to its existence. And whatever one would want to say about its record in other domains, the fact that there has not been a war between its member states (which includes Germany and France who had a reliable habit of fighting each other at least once every generation) seems like a massively important essential public good that it has jointly provided.

Nonetheless, I think we need to set aside the public good of physical security as a basis for substantive equality in relation to the primary goods of income and wealth, both in the case of the domestic state and international politics. For it is not at all clear why the provision of this particular public good should yield egalitarian shares in the economic sphere: The kind of 'contribution' that the principle of fairness requires in relation to the particular good at hand –security- is clearly something different, namely the submission to those rules that ensure the public good's functioning. And this is both true of the domestic and the international case.

The essential public good of a system of property rights and entitlements. So to clarify, if considerations of reciprocity can yield the conclusion of substantive equality in the economic sphere, then that conclusion needs to rely on the other essential public good that the state provides, namely a well-ordered economic structure. But even if citizens do jointly create this essential public good by upholding the laws and contributing taxes

to a stable institutional framework that permits their enforcement, why does fair reciprocity in the provision of this good yield a principle of substantive *equality* in the distribution of the primary social goods of income and wealth? The potential problem here is this: imagine that you, a talented painter, presently lack the means to purchase a canvas and a brush and I buy you one. Now suppose you invest many hours of work and create a beautiful painting that will fetch a high price in an auction. Strictly speaking, it is true that both our actions (you painting, me offering you the canvas and the brush) were necessary to enable the painting's creation. But it is very counter-intuitive to conclude from the mere truth of this causal relation that we should share the money realised in the auction *equally*. Perhaps you do owe me something as a fair return for my help (perhaps you only owe me gratitude), but surely the fact that both our actions were causally necessary for the resulting benefit to come into existence is insufficient to derive equal shares. If you do owe me, then something like a principle of equal cost-benefit ratios seems the more intuitive account of what would be a fair distribution[9]: the relative contribution that each of us has made to the existence of the painting should be reflected in the reward that we each receive in return. And fair reciprocity should take on a similar form in relation to the more institutional settings that both Sangiovanni and Hart have in mind.

Thus, in order to derive equality in the primary goods of income and wealth from the fair cooperation in the provision of the essential social good of a well-ordered economic structure, we need to make the case not merely that each participant stands in some causal relationship to the good's existence, but that each participant's contribution was equal to start off with: if we aim to equalize cost-benefit ratios between us, then equal returns will necessarily result only if we have made equal contributions. Sangiovanni's suggestion is that equality in income and wealth results because the assumption that some individuals make *larger* contributions to the existence of the production and maintenance of the good is misconceived: Even those presently more productive (those who today pay more taxes and contribute more to the social surplus) can only be as productive as they are because others uphold the state's comprehensive set of

[9] For a detailed account of why the best interpretation of cooperative justice in relation to public goods yields the principle of equalizing cost-benefit rations, see (Van Parijs 2011b chapter 2)

economic rules in the first place. As Sangiovanni suggests, "those who are better able to gain from the scheme owe those less able, but who have made their gains possible, a fair return for what they have received. This fair return, I contend, is best captured by principles that do not treat their relative position in the distribution of marketable talents and abilities as such as moral grounds for greater reward."[10]

The considerations that Sangiovanni puts forwards in favour of this last point is the fact that even if people own their native talents, the higher rewards that these talents can fetch in a market depend (a) on the ability to develop one's talents and (b) on the particular preferences and background conditions that permit the more talented to reap a particular benefit from their talents.[11] But both (a) and (b) only exist against the background of a well-ordered economic structure and state institutions in the first place. The upshot of this point, so Sangiovanni thinks, is that we need not ask: 'how much have you contributed to the actual social product?' but we only need to ask 'how much have you contributed to the upholding of a well-ordered economic structure that makes possible the existence of a social product in the first place?' Sangiovanni thinks that we can insist in response to the latter question (but not to the former) that each citizen has contributed roughly equally by submitting to these laws, so that we can derive requirements of egalitarian justice in the economic sphere from them.

But somebody might worry nonetheless that the word 'roughly' in the last sentence importantly slides over the different contributions that, as a matter of fact, individuals within the state do make to the creation and reproduction of the essential social good of a property regime: even if it is true that this public good importantly depends on the acquiescence of many others, and that the ability to develop and use one's talents importantly depend on others' actions, it is undeniable that some do make greater contributions. If this is indeed the case, then the 'embargo'[12] against any claims that those individuals that make bigger contributions to the reproduction of the state might make must spring from a rejection of any principle of reward or desert at some deeper

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[10] (Sangiovanni 2013: 13)
[11] (Sangiovanni 2007: 26)
[12] (Sangiovanni 2013: 10)

level.[13] This point, I will now show, has important consequences for the question of principles once we move to the application of fair reciprocity at the EU level.

4.3.1.3 Essential Public Goods and the EU

The question of this chapter is whether or not the kinds of arguments for substantive economic justice that favour it domestically can be applied to the EU case. So in respect of fair reciprocity, we need to ask the same question about essential public goods that we have described so far, i.e. whether and to what extent EU citizens collectively provide one another with the essential public good of a stable market system that enables each to develop her talents and reap economic benefits from cooperation. The enormously complex analytical and empirical question that needs to be addressed is how significant a role the EU-wide institutional regime governing the internal market plays in shaping the opportunities for productive reward of citizens. Consider the following simplified example: A federal state consists of two autonomous regions A and B. The comprehensive arrangement of the well-ordered economic structure, i.e. the regime of property holdings, production, competition law and so forth, in this federal state is split between a number of regulations at the federal level (call these x) and regulations at the sub-state level that each unit introduces autonomously (call these y). As a result, R[x,y] –the regulations of a full system of secure rights and entitlements that permits individuals to reap benefits from social cooperation for each subunit - is split such that

$$R_A = R_{federal}[x] + R_A[y]$$

and

$$R_B = R_{federal}[x] + R_B[y]$$

What will be the demands of reciprocity in the provision of R[x,y] in this scenario? An ideal account of fair reciprocity would assess each distinct aspect of R in relation to the underlying group of participants that help to sustain its existence and distribute the

[13] I thank David Miller for making me see this point.

relevant social product amongst its members. Thus, inhabitants of A would owe fair reciprocity solely to their fellow As in relation to y and they would owe fair reciprocity to the entire group of all As and Bs in respect of all x. Even though it consists of a much larger number of legal units and many distinctive domains of rule setting that shape its economic structure, we can essentially think of the EU as an arrangement analogous to the one just described.

Sangiovanni, extending his account of fair reciprocity to the EU, seems to agree with this kind of assessment and concludes that we can derive some form of substantive justice from the essential public goods that EU citizens provide for one another. However, he also suggests that we cannot plausibly derive *equally comprehensive* egalitarian requirements for the distribution of income and wealth in the EU context to the one's we find in a centralised nation state because, after all, the range of regulations that affect income and wealth that are determined at the supranational level of EU regulation is more limited than the range of essential public goods that cooperation yields within nation states.[14] Contrary to a one-for-one adaptation of the fair reciprocity model to the EU, Sangiovanni maintains that an account of fair reciprocity in the EU case extends merely to a fair (that is, impartial) distribution of the *risks* of integration: the kinds of reciprocal redistributive obligations between EU member states -and ultimately EU citizens- only covers the disadvantages, but not the benefits, that states may suffer as a result of integrating their economic systems.[15]

In discussing the EU, Sangiovanni seeks to deflect the significance of the supranational contribution to the essential public good that gives rise to fair reciprocity of economics goods. First, he points out that the EU's budget is much more limited than that of any existing state – the government quota (budget as a percentage of GDP) in the EU is

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[14] (Sangiovanni 2012b, 2012c). I say "seems to suggest" because Sangiovanni also attempts to draw the conclusions in regard of fair reciprocity at the EU level, what he calls "EU member state and transnational solidarity", from an interpretative exercise of how current participants actually understand this practice. I disregard this aspect here.

[15] "(...) we ask what costs member states should be willing to pay to offset a specific set of risks associated with integration rather than the more open-ended, unconstrained question regarding how to distribute all benefits and burdens generated by European cooperation (...)."(Sangiovanni 2013: 18)

approx. 1.23% whereas that of even relatively inegalitarian states is much higher.[16] But that point is quite irrelevant by the lights of his own argument: so long as citizens jointly provide the essential public good of a property regime, they owe one another equal shares. All that a low budget quota shows is that the relevant institutions does not create fair reciprocity by way of fiscal *redistribution*, it still may or may not do so through other means. Second, Sangiovanni is impressed by the fact that the nation state, but not the EU, could continue to provide the essential public good of a stable system of a property regime because the EU "does not have the financial, legal, administrative or sociological means to provide and guarantee the goods and services necessary to sustain and reproduce a stable market and legal system (...)."[17] This point comes closer to a strong argument that may show that EU reciprocity may be more limited: if the relevant contribution to the existence of the essential public good that is realized at the higher level is very limited, then likewise we should conclude that the requirement of a fair return at that level will be more limited. Yet surely what matters here is not whether either level of authority counterfactually *could* produce the relevant public good, but what matters is whether the current actual process of provision is one where a lower level of government contributes more to the good's existence.

Is Sangiovanni right to maintain that individual nation states presently are largely responsible for the provision of a well-ordered economic structure for their citizens? Perhaps so. But at the very least, we need to acknowledge that in an economic and political order of the type I have described, each level makes a contribution to the existence of relevant social goods. One initial difficulty is that it is not at all clear how we are meant to differentiate aspects of a comprehensive legal regime where different legal provisions only in combination create the background against which economic production becomes possible. For example, suppose that rules regarding intellectual property are determined at the federal level, whilst those rules relating to the holding, production etc. of physical objects are determined at the sub-unit level. How are we to know the relevant contribution of each? But let us grant that we can very roughly distinguish the contribution that each level is making to the existence of these benefits.

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[16] (Sangiovanni 2013: 17)
[17] (Sangiovanni 2013: 17)

It seems to me that even then, the position faces a dilemma. Recall that in the domestic case, arriving at genuinely egalitarian principles ultimately depended on rejecting all claims of talent- and ability-based desert to a larger share of the social product. However, the only way of arriving at a less-than-egalitarian principle of distributing the social product at the supranational level seems to depend on doing precisely the opposite, namely on lifting our prior 'embargo' against claims to larger shares of the social product based on larger contributions: Whereas the anti-egalitarian response that "I made a larger contribution to the creation and reproduction of background norms that ensure the existence of a functioning economic infrastructure, therefore I deserve more" was inadmissible in the domestic case, the collectivized version that "our social scheme of cooperation makes a larger contribution to the existence of the overall social benefit, therefore we should hold on to a larger share" seems to be exactly the kind of reason that those rejecting supranational egalitarian principles are putting forward. It is not clear what can justify this difference in treatment of claims about desert and contribution at the individual and collective levels.

4.3.1.4 The limits of fair reciprocity

Approaching EU social justice through the lenses of cooperation and fair reciprocity is clearly a very fruitful approach. One core advantage of it is that it pays attention to the *distinctive character* of the EU as a supranational institutional arrangement that has taken on important public goods provisions for persons under its authority, and is in this sense very different from the global political landscape whilst perhaps still falling short in certain respects of the full range of goods that states provide to their citizens. Despite this crucial positive point, I want close this section by suggesting here –*pace* Sangiovanni – that we should not think of fair reciprocity as the only basis for concluding that institutions should be organised along the lines of substantive principles of social justice that I have elaborated in the previous chapters. There is a positive and a negative path to that conclusion. The negative path is to show that basing the substantive requirements of institutions solely on the principle of fair reciprocity has problematic consequences. The positive path is to show that considerations other than reciprocity point in the direction of substantive principles for institutions. Here, I want to focus

briefly on the negative case, since the positive case is accomplished by the discussion in subsequent sections and chapters.

As the discussion suggested, determining the obligations of justice that stem from reciprocity requires us to determine what counts as having contributed to a particular cooperative scheme and hence who falls under the scope of justice. The fundamental difficulty with this assumption is that egalitarian obligations only result where individuals *actually can and do* cooperate in the production of some good. As Brian Barry and others have suggested a long time ago in criticising Rawls, grounding our conception of justice solely in this way (i.e. solely on cooperation or reciprocity) may have unacceptable moral consequences since it excludes those most vulnerable in contemporary society (children, the severely handicapped, etc.) from justice's reach: at least prima facie, they would effectively 'fall through the grid', meaning that they would not be owed anything based on fair reciprocity because they have not brought anything to the table.[18] Sangiovanni is careful to avoid this charge by interpreting the idea of contribution in a very lax way as far as the idea of contribution to the essential public goods he describes goes: it is sufficient to 'make it possible' by passive compliance with the laws of the land for others to derive benefits from the state: "national solidarity says that an individual is integrated into a society when he aids in the reproduction of the state through his participation, contributions, and compliance."[19] But in order for the most vulnerable citizens to be owed egalitarian shares, it must be strictly speaking the case that passive compliance is actually *sufficient*: quite frequently, all that we can say about the contributory effort of the least endowed is that they are not actively undermining the cooperative scheme, e.g. that they do not transgress and undermine existing property rules, labour regulation, public order directives and so forth.

But even under this lax interpretation, it seems difficult to account for especially disadvantaged individuals, e.g. the severely handicapped. If we want to uphold that the

[18] This was Brian Barry's main objection against (even fair) reciprocity-based theories of justice (Barry 1991: 235).

[19] (Sangiovanni 2013: 27) Notice here as well that the more lax we interpret the notion of a sufficient contribution to be owed *equal* shares, the more likely we are to face complaints of desert by those making larger contributions.

basic structure of society should be set up in such a way as to guarantee these individuals a decent life *as a matter of justice*, fair reciprocity cannot be the only ground based on which we might draw such a conclusion. Thus, it appears that fair reciprocity ought to serve as a crucial ground but not the sole ground for obligations of substantive justice, either in the EU case or more generally. As Brian Barry suggested, we must "see if there is not some principle of justice complementary to justice as reciprocity that comes into its own when we move outside the special case of justice among contemporaries who are members of the same society. I emphasize that it must be complementary because I believe that justice as reciprocity is here to stay. It is (...) a cultural universal, and anyway it makes a lot of sense. Any theory of justice that tried to eliminate justice as reciprocity would be doomed from start. We must therefore seek to show how justice as reciprocity needs to be supplemented, not displaced."[20] One principle that could supplement justice as reciprocity and which might at least in some cases take the edge off the latter is the simpler concern that public institutional agents charged with distributing goods amongst persons must at least sometimes do so impartially, where impartiality also includes blindness as to whether or not a person has contributed in *any* meaningful sense to the cooperative surplus.[21] Another principle could be a basic duty of natural justice, i.e. a moral requirement to help and assist those unable to sustain a decent life without assistance from others.

4.3.2 Equal claimants

We saw in chapter two that there are also arguments for equal shares independent of whether or not those subject to the institution are participants in a cooperative effort to produce the good. At least in some cases, it seems that the EU can be described as the sort of distributing agency that must treat those amongst whom it distributes a certain good directly in an even-handed manner. In this respect, consider the following examples: First, the EU distributes subsidies to farmers in all EU member states through its common agricultural policy (CAP) which is, still today, the largest item in

[20] (Barry 1991: 235)

[21] See e.g. the discussion of such arguments in (Scanlon 2005). This was of course also in certain respect the idea underpinning Barry's conception of "Justice as Impartiality". (Barry 1995)

the EU's overall budget.[22] Intuitively, it seems that where the EU introduces rules of agricultural policy and distributes subsidies amongst farmers living in locations across all of its territory, it would be unfair if the rules in accordance with which such subsidies are distributed would specifically favour some farmers over others simply because of their nationality, independent of whether or not their state contributed more or less to the CAP. There are obviously difficult questions about where to draw the limits to such requirements of equal treatment – for example, it may be legitimate for the CAP agency to distribute funds in accordance with jointly set goals such as animal welfare or health and food safety, or the subsidies may be calculated relative to the purchasing power it gives each farmer in his home country. But it would strike many as unfair if a farmer in say, Spain, could claim much larger (purchasing-power adjusted) subsidiaries for comparative farming activities than her Czech or Polish counterpart.[23]

A second example concerns Structural and Cohesion funds that the EU disburses to weak economic areas. The aim of the EU's €380bn regional policy, amounting to roughly one third of the EU's overall budget, is to increase "economic and social cohesion as an expression of solidarity between the Member States and regions of the EU."[24] Specifically, the EU aims to "reduce disparities between the levels of development of the various regions and the backwardness of the least favoured regions."[25] Now independent of whether or the EU *should* engage in the large-scale facilitation of local infrastructure and development projects, a requirement of fairness would seem to be violated if the EU based its decisions for accepting or rejecting such projects on criteria unrelated to the aim of reducing intra-EU disparities.

What unites these two examples is the fact that they fit the general notion of Scanlon's 'equal benefit' argument mentioned in the last chapter. It is not necessarily the case that

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[22] In 2011, the annual expenditure of CAP was €58bn. Although this by far the largest component of the EU's common budget (43%), CAP, being the only comprehensively pooled area of public expenditure in the EU, in that year amounted to less than 1% of all public expenditure in the EU (i.e. national and EU expenditure combined). http://ec.europa.eu/agriculture/faq/ (accessed: August 5, 2013).

[23] The example is not hypothetical: all farmers in Central and Eastern European states who joined the EU after 2004 are subject to much lower subsidies per hectar of farm land (approx. 20% of the Western European level). One major initiative of the EU Commission's post-2013 CAP agenda is to remedy this unfairness by a wholesale reform of agricultural subsidies in the EU. See (European Commission 2013c)]

[24] http://europa.eu/legislation_summaries/glossary/economic_social_cohesion_en.htm

[25] (European Union 2008)

each farmer or each member state in which the relevant farmer resides contributed equally to the cooperative surplus. And it seems irrelevant whether or not a specific region that benefits from EU cohesion funding (or the state in which this region lies) contributes to the EU budget. Perhaps the best explanation why we have a strong intuitive sense that there should be no obvious discrimination between farmers or between recipients of subsidies is that the relevant member states all have given up some authority to determine subsidy levels independently. By freely subjecting themselves to a common institutional scheme, we feel that the institutional agency that claims to have political authority and governs this sphere of activity by distributing advantages is morally required to treat them equally and impartially.[26]

As with the previous one, we can see the merit of the particular argument in the EU context relative to its potential applicability to the context of global politics: Scanlon's equal benefits argument for egalitarian distributions seems much more applicable to the EU case than to the case of global politics more generally. The EU qua institutional agent is often asked to dispense resources and goods amongst those subject to it and has therefore incurred a duty to do so impartially. This seems an improbable description of the current role played by any actually existing global institution. A similar conclusion is reached by O'Neill when he suggests that the EU does in some cases give rise to claims for institutional impartiality and equality, but that if we look to extend such an argument globally "it is plausible to think that there are no salient concerns relating to global inequality (at least in the absence of any kind of world-wide institution which had these kinds of egalitarian obligations of giving 'equal benefits'), with respect to some good, to its citizens."[27]

What is he normative status of the equal benefit argument for equality in the EU context? As the above discussion has indicated, it is a conditional argument for equality: if the relevant institution is charged by its principals with fulfilling a specific task, then in discharging this task it must treat the interests of the principals judiciously and

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[26] Scanlon's own view appears to be that the requirement of equality in outcomes in such cases is an expression of our concern for fair equality of opportunity. See especially his discussion in (Scanlon 2013c)
[27] (O'Neill 2013: 450)

impartially, which in an important range of cases will require distributively equal outcomes.[28]

4.3.3 Coercion

The final route to arrive at a benchmark of equality in the context of domestic state institutions mentioned in chapter two arrived at such a moral requirement by arguing that the state must distribute primary social goods in an egalitarian fashion because state institutions force those subject to its rule to obey its directives. If we think about the relevance of this argument for the case of the EU, we see that at least one version of it threatens to undermine the idea that EU institutions are subject to substantive requirements of social justice in ways similar to domestic institutions: If the only justification for substantive social justice domestically turned out to be that such institutions are essentially non-voluntary or coercive (i.e. the fact of coerciveness is the one necessary condition for such requirements) then potentially the EU would fail to be subject to such requirements. After all, it is an institution that exists only in virtue of acts of consent to supranational authority of collective state agents. Thus, contrary to the previous two arguments for substantive economic justice, the coercion-based justification of substantive justice, when considered a necessary condition, seems to speak *against* extending such principles to the EU. For that reason, I simply set it aside a this stage in order to assess the potential counter-argument to substantive economic justice at the EU level that the requirement of non-voluntariness of coercion gives rise to substantive justice in the following chapter.

4.4 Is fair equality of opportunity amongst EU citizens required?

The previous sub-section discussed the first part of substantive principles of domestic justice and to what extent they might be thought to apply to the EU's institutions. I now turn to the second aspect of substantive economic justice I outlined in chapter two, namely fair equality of opportunity. Again, my strategy is to see what conditions of domestic society give rise to the requirement of equality of opportunity and what

[28] See the much more detailed account at the end of chapter five. For Scanlon's most recent interpretation of the moral status of claims to equal treatment, see (Scanlon 2013c).

arguments have been advanced in favour of extending the relevant principle globally, in order to evaluate whether the idea of equality of opportunity might be relevant in the particular context of EU institutions. One way to extend the idea of equality of opportunity beyond the state is what may be called the 'direct cosmopolitan' strategy.[29] Following this strategy, the Rawlsian point that all equally motivated and talented persons should have equal opportunities can be straightforwardly globalised such that any two persons globally should have the same chances of ending up in a particular desirable position. But a number of arguments have been advanced against this kind of one-for-one adoption of this principle globally along the lines of Moellendorf's and Caney's suggestions. Here, I discuss two such arguments, before making the case that the ideal of fair equality of opportunity might have purchase amongst EU citizens *even if* these arguments show that the 'direct cosmopolitan' strategy of globalising fair equality of opportunity is mistaken.

4.4.1 Two anti-cosmopolitan arguments against global equality of opportunity

The first move against global equality of opportunity is to insist that individuals with equal natural endowments globally should have *equivalent* opportunity sets rather than *identical* ones. Let us define the requirements of *equivalence* and *identity* as follows: If we assume the requirement of *identical* opportunity sets, then there is equal opportunity between persons A and B (who are equally motivated and talented) just in case they have equal prospective chances of ending up in exactly the same positions of advantage X,Y or Z. By contrast, if *equivalence* is a sufficient condition for equality of opportunity, then A and B must have *equivalent* opportunity sets, which is the case just when A has prospective chances of ending up in positions of advantage X_1, Y_1, Z_1 and B has equal prospective chances of ending up in positions of advantage X_2, Y_2, Z_2, and, moreover, the benefits that attach to X_2, Y_2, Z_2 are of equal value as those that attach to X_1, Y_1, Z_1. The requirement of identity in opportunity sets is a more demanding sub-category of equivalent opportunity sets: if A and B compete fairly for the same (identical) jobs, then their prospective jobs by necessity will have the same benefits.

[29] It is most clearly pursued by Simon Caney (Caney 2001), and, with reference to global economic interdependence, by Darrel Moellendorf (Moellendorf 2002, 2009).

Having clarified this distinction, the anti-cosmopolitan argument maintains that any insistence on identity as opposed to equivalence in the global case is not only wildly utopian, but also morally unnecessary.[30] It is unrealistic because contingent facts about individuals such as their native language will make it practically impossible to provide identical prospects to people with equal talents and motivation but other cultural and linguistic differences. It is, moreover, unnecessary because it is difficult to see what the legitimate complaint by any of two individuals who have similar endowments but live in different societies could be against a situation where each has equivalent opportunities to reach positions of equivalent advantage within his or her relevant domestic context: It seems perfectly reasonable to say that there is equality of opportunity between them when each has equal chances of receiving the relevant scarce good within their domestic context. Thus, the relevant moral requirement between persons residing in separate states and societies is that they should have equivalent opportunity sets at similar levels of talent and motivation to achieve equivalent positions in terms of advantage rather than identical ones. I will accept the argument here, but show in the next section how the existence of the EU complicates the picture.[31]

The second argument against cosmopolitan equality of opportunity is that cultural pluralism of the kind that we see globally makes it impossible to fix a metric according to which we can establish whether two opportunity sets from persons residing in different cultures are in fact equal (in the sense of equivalent). As Boxhill argues, "if in some societies the pinnacle is occupied by the businessman and businesswoman, this is by no means always the case; in Hindu society it was occupied by the priest, in old China, by the learned man, and in other societies, by the soldier. For which of these standards are opportunities to be equalised? To choose one over the other seems invidious and presumptuous."[32] The consequence of examples of the kind provided by Boxhill uses, which concerns widely different cultural backgrounds, is that if two average persons from different cultures were to evaluate the particular opportunity set

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[30] (Miller 2007: 63ff.)

[31] Though there are further questions that one might ask about this idea of equivalence (should the advantages attached to the relevant positions be *equal*, or must they merely be *equivalent* relative to other positions within the particular society?)

[32] (Boxhill 1987: 148)

facing a particular person, the relative value that each of them will attach to particular options will make it very difficult or even impossible to construct a coherent metric by which we can then assess different opportunity sets that respects each of their basic judgements. Thus, where culturally contextual differences in the value that attaches to certain options are incommensurable, the idea of fair equality of opportunity across the contexts has no purchase.[33] Let us also grant that the argument from cultural incommensurability has force against the idea of global equality of opportunity.

4.4.2 Fair equality of opportunity and the conditions of the EU

Does the persuasiveness of these anti-cosmopolitan arguments for questions of global justice translate to the case of the EU, i.e. is equality of opportunity pointless in an institutional order like the European one? I want to suggest that neither argument carries over into the more limited EU context and that there are moreover additional reasons to insist that current purely 'non-discrimination'-based policies governing the EU labour market need to be supplemented with more robust concerns of fair equality of opportunity.[34]

4.4.2.1 Cultural Specificity

Let us start with the second argument about global cultural incommensurability and look first at some crucial difference between the global case and the European case as far as cultural incommensurability is concerned: the range of cultural background beliefs amongst EU citizens that are incompatible is considerably narrower than the range of cultural diversity we encounter globally. Aside from the crucial fact that many cultural and religious beliefs are identical or almost identical because they stem common cultural origins, European societies all broadly comparable levels of economic prosperity (when considered in a global perspective) and operate at roughly equivalent levels of institutional complexity, comprising pluralistic public spheres, modern bureaucracies, highly specialised capitalist markets (including labour markets) etc. Thus, even absent *common* institutions –the relevance of which I discuss below-, the

[33] See e.g. the discussion in (Miller 2007),(Brock 2009)

[34] On current freedom of movement and non-discrimination legislation in the EU, see: (Ellis & Watson 2012)

assessment of relevant positions of social advantage domestically could be expected to be quite similar between these states, such that the average person in any EU member states will advance the same evaluation concerning any randomly picked sample of persons' opportunity sets.

Moreover, consider the fact that Europeans already have collectively settled many of the relevant questions that pluralists see as obstacles in the global case: there are EU-wide regulations about how many years of schooling of what subject counts as a satisfactory basis to be permitted a graduate university education[35], there are EU-wide guidelines about what constitutes disability[36], when a person can call herself a doctor[37], how many hours of work per week constitute inhumane treatment[38], when a rural area is 'structurally weak'[39], what kinds of factors can permissibly be counted as relevant when an employer evaluates a job application[40], and so forth.

This is not to deny that there may still be important questions about the culturally specific relative value of different opportunity sets about which Europeans collectively disagree. But pushing the argument too far into this direction runs the danger of emptying out the content of equality of opportunity in the domestic case as well: once we assume that Northern French and a Southern English ideas of what constitutes equal opportunity sets varies too dramatically to permit valid comparisons, it hard to see what should bar us from asking similar questions domestically. What arguments could we advance against somebody claiming that a Welsh person's culturally specific understanding of what constitutes a valuable opportunity set is very different from a Scottish person's, such that we no longer must equalise opportunities between them?

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[35] (European Ministers of Education 1999)

[36] http://ec.europa.eu/justice/discrimination/disabilities/disability-strategy/index_en.htm

[37] Council Directive 89/48/EEC of 21 December 1988 introduced "a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration." Directive 99/42/EC covering harmonized standards for non-regulated professions; Directive 2005/36/EC on "the recognition of professional qualifications".

[38] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 "concerning certain aspects of the organisation of working time"

[39] see e.g. Regulation (EC) No 1080/2006 "on the European Regional Development Fund"

[40] (Barnard 2012 chapter 3)

After all, we might certainly find statistically relevant differences amongst the different cultural and linguistic groups that exist in pluralist Western societies.

4.4.2.2 Equivalence and Identity of Opportunities

Faced with this difficulty, those rejecting (fair) equality of opportunity beyond the state may simply insist on their first argument: EU-wide fair equality of opportunity is unnecessary so long as equally talented and motivated persons in each member state have equivalent opportunities in their national context. But it seems to me that this second argument is at least partially inapplicable to the EU. What invalidates the statist position in this case is that the indisputable core element of the EU is a free market, which includes as one crucial aspect a free market in *labour*.

Let us make the following plausible assumption: the actual prospective chance that a person has of ending up in a desirable social position depends on a combination of factors, namely (a) the person's innate talents and motivation and (b) the opportunities that a person has to actually develop these talents and turn them into a skill set that makes her an attractive candidate for a position. Now consider the following example: Initially, there are two fully separate markets in labour and manufactured goods, say, Germany and Italy. Now imagine two students, one German and one Italian, with equal talent and motivation who each aspire to become highly-paid executives at a car manufacturer. In the initial situation, there is an Italian labour market in which the Italian child has a certain chance of becoming a highly-paid executive at a local *Fiat* plant, and there is a German market in which the German child has a chance of gaining such a position at *Volkswagen*. Let us assume that each state separately fulfils the requirements of fair equality of opportunity. Since cross-national equality of opportunity requires only equivalence between prospective chances, fair equality of opportunity is realised for all citizens in both states. We might call this scenario "divided but equivalent". In such a situation, it does not matter whether either of these two students will receive certain advantages relative to the other, e.g. special courses in mechanical engineering at university level or the like, so long as each potential competitor in the domestic labour market receives equal opportunities to turn talent

into skill set. So, under non-integration and equivalence, a better education for the Italian student relative to German does not threaten equality of opportunity between these two.

But now suppose that we apply more realistic conditions of the open European market, namely that there is a unified labour market at least for highly skilled workers. Changing the assumptions in this way will have the effect that the German and the Italian will begin to compete not merely for *equivalent* local jobs, but the various jobs for which they apply are now *identical* such that potential employers will have to evaluate them against each other. Since these positions of advantage are by definition scarce, how each of them fares impacts the chances of the other. Now suppose again that the Italian student received a better education at university and as a result of this fact she is a more desirable employee to have. She can choose between working for *Fiat* or *Volkswagen*, whereas the German engineer-to-be fails to secure a position. In this case, the German would suffer disadvantaged access to a desirable professional position as a result of factors that are unrelated to either her talent or motivation.

European economic integration has created an open competitive market –regulated by common institutions- in which individuals directly compete for positions of advantage. Even though the EU enforces 'formal' equality of opportunity and proactively fosters an EU-wide non-discriminatory labour market, it currently lacks the institutional provisions to guarantee anything approximating *fair* equality of opportunity: Thus, if the ideal of fair equality of opportunity had normative force domestically, then the EU must attempt to realise equivalent conditions amongst all those subject to competition for identical positions. Crucially, doing this would also require us to interfere quite drastically with national autonomy over education and potentially also with the distribution of economic resources, since the realisation of equal opportunities is often compromised where some can buy better access to educational opportunities and the like.

So far I have explained one argument that speak in favour of conceiving of requirements of fair equality of opportunity in the EU case in terms similar to those that

obtain within each nation state. But what makes the EU a particularly difficult case for the subject of equality of opportunity is that some scarce goods and positions of authority are limited to domestic contexts. How should we deal with this fact, i.e. what are the requirements of fair equality of opportunity under conditions of *partially* overlapping competition for positions and rewards of the kind I have described? In a first step, we might try to determine which areas of all individual member states' economies remain fully autonomous in the sense that the initial picture described in the example of the German and Italian would-be engineer still holds today. A case in point here would be positions for which there is presently a (justified) restriction based on nationality or long-term residence. Take for example high political national offices or important positions in the public administration of each member state. For such positions, there would be no need to equalise opportunities between those seeking such offices residing in different member states. But it seems clear that these cases do not constitute the majority.

A second, more significant set of cases that we need to assess will be the ones where there is relatively little cross-national competition for identical positions simply because of the particular requirements of the specific position. It seems then that at least for a rather large number of positions of advantage, there will be 'natural' barriers that prevent the existence of direct competition for identical jobs. So long as persons with equal talents/motivation who speak different languages and reside in separate member states have equal chances of attaining these desirable position in the national context – provided these positions have roughly equal rewards- the ideal of fair equality of opportunity does not require cross-national equalisation of chances to develop talents to equal actual skillsets.

So can we conclude then that heavy interference with the availability of opportunities to develop one's talents into an actual skillset only needs to be introduced where there is direct competition for identical jobs across EU borders? If so, then, the range of relevant positions would appear to be limited to a number of high-profile positions and social ranks including (English-speaking) university teachers, engineers, pilots, bankers

and company executives, as well as highly paid footballers and artists.[41] But what this point fails to notice is that there is also another, more indirect argument to show that the initial anti-cosmopolitan argument loses its plausibility in the EU case. The initial example of the two would-be engineers showed that the "divided but equivalent" scenario no longer obtained because realistic assumptions about the actual EU show that the relevant labour market in which each competes are not in fact fully "divided". But reaching beyond this initial argument, we can also question whether the EU can guarantee the second element, namely the *equivalence* of the rewards that attach to those positions that are not (yet) subject of transnational competition.

The EU has introduced not merely an open labour market, but crucially, it has also introduced a cross-national market of goods and services. Whilst this market in goods and services does not by itself lead to direct competition for particular positions amongst individuals with different skillsets, it *does* have the indirect effect of changing the advantages and rewards that attach to particular positions relative both to other positions in the national context and relative to similar positions in other countries. Whilst the first implication need not be a worry from the standpoint of fair equality of opportunity (the ideal does not stipulate *what* rewards should attach to a particular position but only that similarly talented/motivated persons should have *equal* chances of gaining these rewards), the second one does pose a problem because it threatens to undermine the possibility of maintaining equivalence between different persons with equal skillsets in separate states. Think of an unemployed former Scottish shipwright in a Glasgow shipyard whose situation has declined as a result of the pan-European market in goods, and a Polish shipwright working in a more competitive shipyard in Gdansk whose rewards have significantly improved as a result of EU-wide competition for shipbuilding contracts. Even where they do not compete for the same *position*, they do compete for the scarce benefits that can be derived from being employed in that position.

[41] For an empirical discussion of EU labour market mobility and its consequences, see articles collected in (Galgoczi, Leschke, & Watt 2009). It is noteworthy here that the higher the economic and social rewards attached to a position, the more genuinely transnational the competition has become.

Now one response to this kind of example is simply to insist that if there is *fair* competition between these two workers, then there is in fact no violation of the ideal of fair equality of opportunity: the purpose of fair equality of opportunity is precisely to ensure that individuals can compete fairly for desirable positions (and the benefits that attach to these positions). But the response seems inadequate because the prospective chances of each of these workers being awarded a shipbuilding contract and therefore being able to reap a certain benefit from their talents depend on factors completely unrelated to each person's talents and motivation, namely such things as overall level of competitiveness, currency exchange ratios and so forth. So even though the EU open market may not have created an all-out competition for identical positions amongst all EU subjects (though it has done that in those cases noted above), the more consequential effect of the EU's existence might be its threatening influence on the equal value of rewards that attach to filling these positions in each national context.

Again, we have seen that the EU presents a case for social justice that is different from both, the constellation that obtain domestically and the global institutional condition, and that therefore gives rise to complex questions of social justice specific to that context: First, fair equality of opportunity is unlikely to run into difficulties of incommensurability between dominant cultural values similar to those we would encounter if we tried to globalise Rawlsian equality of opportunity. Second, EU member states have opted for an open market in labour and goods and have thereby created an institutional arrangement in which the simple approach of 'divided but equivalent' opportunity sets has become (partially) inapplicable.

4.5 Conclusion

This chapter introduced the distinction between transnational and internationalist arguments in support of the conclusion that substantive principles of social justice should be extended to the level of supranational EU institutions. It then assessed arguments for such principles that derive from direct transnational arguments. In respect of these, it was argued that those basing domestic equality-inclined principles of distributions of income and wealth on facts about reciprocity and cooperation amongst

citizens should accept that at least some part of the essential public good of a system of property that is provided at the EU level should be subject to similar equality-inclined distributions. Moreover, there is a strong case for principles of fair equality of opportunity amongst all EU citizens because, as a result of an open market in labour in the EU, Europeans effectively compete with one another for positions of authority and advantage in many domains.

One general upshot here has been that the impact of EU institutions on EU citizens and social conditions in Europe more generally are much closer to the case of the nation state discussed in chapter two than they are to the overall conditions prevailing in global politics. As a result, some of the more statist arguments against substantive global justice were shown to fail to be persuasive in the context of the European Union. However, I have not proposed that we need to assume that these principles will be substantially the same as the ones discussed in chapter two, nor has the argument been that exactly the same institutional policies are required at the EU level compared to the case of the nation state.

Chapter 5

Social justice in the EU: The objection from voluntariness

5.1 Introduction

Previous chapters argued that we have several reasons to favour substantive justice domestically, and that at least some of these reasons apply in important respects *immediately* to the case of the EU. This chapter considers an objection to this argument: Contrary to my pluralist account of (substantive) justice's grounds, there is really only one relevant basis to establish that a set of institutions should be governed by such principles. In particular, certain ways in which state institutions *force* individuals to comply with their norms can only be rendered justifiable through the application of substantive principles of social justice amongst their subjects. So comprehensive, *non-voluntary* institutions trigger distributive equality. The *strong* –or anti-pluralist- version of this non-voluntariness argument maintains that *only* institutions that are non-voluntary and comprehensive lead to such requirements. It is this stronger version that has come to be discussed in much detail in recent debates about global justice.[1]

If *only* non-voluntary, comprehensive institutions that use force could give rise to requirements of egalitarian shares of primary social goods amongst persons, then this would fundamentally threaten the position that this thesis has so far sketched: First, it would follow that the *strategy* pursued was mistaken because there is really only one important ground to argue for egalitarian distributive shares in income and wealth and fair equality of opportunity.[2] Second, the *goal* my argument pursued would have been misguided: whilst state institutions are non-voluntary, coercive and comprehensive in

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[1] Key proponents of this view are Thomas Nagel, Michael Blake and Ronald Dworkin (Blake 2001, 2011; Dworkin 2013; Nagel 2005).

[2] Thomas Nagel's 'political' version of the non-voluntariness argument is quite clear in that all requirements of justice stem from considerations of non-voluntariness (Nagel 2005). Blake prefers to speak about the concerns of 'relative deprivation' and 'egalitarian *distributive* justice' that only arise in coercive (non-voluntary) institutional arrangements. It is not entirely clear whether he intends his argument to rule out equality of opportunity beyond the state as well, but his remarks, especially the discussion of a counter-example (p.293) make it the much more plausible interpretation of his argument. (Blake 2001)

the substantive justice-triggering sense, the EU as an institutional arrangement which is based on the consent of collective state agents is quite plausibly not comprehensive or non-voluntary in the relevant sense and therefore does not require substantive justice.

The first aim of this chapter is therefore to argue that the strong argument from non-voluntariness is unpersuasive. So the previous discussion has not been in vain. However, I do not believe that all of the weaker possible versions of the non-voluntarist position are mistaken. Properly spelled out and freed from the excessive ambition of demonstrating that *only* arguments from non-voluntariness can ground distributive obligations, it provides one reason for establishing principles of substantive justice amongst persons subject to political institutions that claim to exercise public power. And as I will show, this weaker argument about the requirement of justification for the exercise of public power is fully compatible with –and even provides further support for- the view that such principles apply at the EU level.

The next section (section 2) introduces two versions of the non-voluntariness argument in more detail. Section 3 turns to a critical discussion of the coercion-based argument from non-voluntariness: I show why tying requirements of substantive justice to claims about the wrongfulness of coercion is mistaken. Section 4 analyses Nagel's version of 'dominion'. First, I suggest that although Nagel's version points towards a plausible view about how the exercise of public power may give rise to certain procedural and substantive requirements of equal concern on behalf of that authority, Nagel overstates his case with the implausible assumption that obligations of justice *only* arise if and when state agents have authority and fiduciary obligations. I then show in section 5 how the resulting position, rather than undermining the idea that the EU gives rise to substantive requirements of justice, actually provides further support for that claim.

5.2. Two versions of the non-voluntariness argument

Both versions of the non-voluntariness argument locate the substantive justice-triggering element of institutions in *process* rather than *substance* or *output*: requirements of substantive social justice do not, or not in the first instance, derive from the fact that

institutions produce and distribute goods, but rather from certain facts about *how* institutions create compliance with their directives and rules in the process of creating social benefits. But despite this commonality, the two versions of the non-voluntariness argument that I discuss here focus on distinct (though partly-overlapping) aspects of the way in which state institutions ensure compliance.[3]

5.2.1 Coercion-based non-voluntariness argument

Michael Blake presents the first version of the non-voluntariness argument as a way to reject global obligations of egalitarian justice without deriving partiality in distributive matters from special moral relationships and responsibilities.[4] Blake focuses on the value of autonomy and the (prima facie) wrongfulness of *coercion*, and argues that domestic state institutions can only 'redeem' the fact that they create compliance with laws through coercive threats and sanctions by offering a special justification for the law's coercive character to those who are forced to comply. This special justification succeeds if and only if institutions treat individuals substantively as equals, which in turn requires egalitarian comparative shares of primary goods.[5] More precisely, Blake's argument proceeds as follows:

(1) Personal autonomy is valuable

(2) Coercion always violates autonomy and is thus always *prima facie* wrong, but coercion can nonetheless be justified all things considered

(3) Comprehensive state institutions inevitably coerce those subject to them

(4) Comprehensive state institutions are only all things considered justified when no one subject to them could have reasonable grounds to reject their existence

[3] I do not discuss here more permissive accounts of non-voluntariness that ground obligations of distributive justice in weaker understandings of the way in which institutions induce those subject to them to act, e.g. 'framing' (Julius, A. J. 2003; Julius, A J 2009). See the discussion why *framing* arguments fail in (Sangiovanni 2010)

[4] (Blake 2001: 257)

[5] The particular version of equality-inclined distributive principles that Blake argues for is Rawls' difference principle. (Blake 2001: 283)

(5) Egalitarian material distributions of primary goods are a necessary element in any justification of comprehensive coercive institutions that no person subject to such institutions could reasonably reject

Thus, egalitarian distributive justice is a necessary part of any justification for state institutions and the comprehensive property regimes that they enact. Let us briefly analyse the individual steps of the argument more closely: It begins with the -for liberals uncontroversial- premise that personal autonomy is extremely valuable, that it is in fact one of the highest goods. Following Joseph Raz, Blake argues that the three requirements for autonomy are adequate mental capacities to make choices and develop and act upon a plan of life, a sufficiently large set of meaningful options to choose from and the absence of somebody else imposing his will on us.[6] Blake goes on to argue that the realization of an autonomous life can be hampered either by acts which meaningfully limit the options available to us or by deliberate interferences that subject us to another person's will. Coercion paradigmatically involves the latter, and often both at once. Although coercion is always *prima facie* wrong, there are instances where it can be justified all things considered. Blake then turns to an account of the state in order to establish whether it is coercive and, if so, what could justify its coercive practices. He concludes that although state institutions coerce individuals through the sanction-backed enforcement of criminal and private law, the state is also a morally non-optional institution because through coercion, it offers citizens the opportunity to live autonomous lives in the first place.[7]

Having reached this interim conclusion, Blake asks under what conditions the coerciveness of the state can be justified to those being coerced and turns to the notion of hypothetical consent: Only where nobody subject to the state can reasonably reject its coercive enforcement practices can we consider coercion justified. The final step in the argument is the claim that the *prima facie* autonomy-infringing nature of coercive state institutions can only be rendered acceptable to each individual by introducing egalitarian principles.[8] The state coercively enforces a regime of *ownership* and

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[6] (Blake 2001: 267)
[7] (Blake 2001: 281)
[8] (Blake 2001: 283-284)

principles of entitlements to resources through private law –such as those laws governing property, tort, and contracts- as well as through taxation, and the worst off members of society could reasonably reject these unless such institutions and norms make them comparatively better off, thus advancing their autonomy.

What follows from the argument? Blake has made clear that he not only believes that his argument presents *one* plausible explanation of why distributive equality in relation to primary social goods is a necessary element of justice, but that it is in fact *the only* plausible explanation why such stringent duties arise between persons. As he poignantly states: "Coercion (...) is the sine qua non of distributive justice, making relevant principles of relative deprivation."[9] In subsequent work, Blake has repeatedly defended this normative position as well as the empirical claim that institutions beyond the state level do not meet the relevant jointly necessary and sufficient conditions of comprehensiveness and coerciveness. Thus, we are led to believe, requirements of substantive (comparative) justice do not travel at all past the confines of domestic state borders and, as a result, calls EU-level concern with relative deprivation are unwarranted.[10]

5.2.2 Dominion-based non-voluntariness argument[11]

Thomas Nagel has proposed a second version of the non-voluntariness argument. The understanding of justice that Nagel defends, which he calls the 'political' conception, maintains that justice *as such*, including those principles of substantive justice discussed in previous chapters, only applies domestically: the necessary condition to render egalitarian distributions that mitigate the arbitrariness of our position in the distribution of social goods applicable is the fact that we are implicated, independently of consent, in an institutional system of rules that both claims to speak in our name and forces us to

[9] (Blake 2001: 289)

[10] (Blake 2008, 2011)

[11] An alternative name for this view comes from Sangiovanni, who calls it the argument from 'imposition'. I refer to 'dominion' here to capture the dual nature of this idea, namely (a) the fact that institutions *impose* directives on persons in a special way and (b) the fact that those persons accept the institutions' authority by obeying.

comply with its directives.[12] This dual condition of author and addressee constitutes in Nagel's words a "special involvement of agency" which, he thinks, is "inseparable from membership in political society."[13] To be precise, his argument takes the following form:

(1) A collective agent exercises *dominion* just when:
   a. Persons are involuntarily subjected ("without being given a choice") to a set of comprehensive norms
   b. Persons' individual agencies are implicated in the sense that the collective agent claims to speak in their name
   c. Persons can be held liable for the collective agent's decisions
   d. Persons are forced into compliance and actually offer obedience

(2) Persons over whom a collective agent exercises *dominion* have special standing to demand a justification for being subjected and implicated in this way

(3) Providing justice (including substantive justice) to those over whom *dominion* is exercised is a necessary aspect of any justifiable collective agent

Clearly, Nagel's argument differs from Blake's coercion-centred argument. First of all, Nagel does not explicitly formulate the issue of distributive justice as a means to further liberal autonomy. Second, he does not focus on one specific characteristic of how the state employs a particular strategy that is pro tanto wrongful to realise its aims. Rather, he hints at a number of distinctive elements: there are various aspects that together explain the state's moral peculiarity and that give rise to requirements of justice. Indeed, many have wondered how the various features that he describes can be thought to fit together into a coherent picture of the state.[14] The best explanation, it seems, is to interpret Nagel's description as a schematic account of a state that has political legitimacy in the sense of exercising *dominion* or political authority over its subjects.[15] What exactly is meant by this? First, states claim not merely the right to use coercive

[12] (Nagel 2005: 128-129)

[13] (Nagel 2005: 128)

[14] Notice for example Thomas Christiano's bewilderment at Nagel's set of "highly suggestive and tantalizing" conditions. (Christiano 2008b: 944)

[15] Since the concept of authority is frequently used in non-political contexts, I call the relevant view here the *dominion* view. Nagel himself approvingly quotes Ronald Dworkin's formulation of dominion. (Nagel 2005: 120)

force to further individual autonomy, but they claim that their directives are *authoritative*, that is, they count as binding moral requirements for subjects that are content-independent and 'trump' other reasons that addressees might have. So the state is not unique because it has the right to use particular means to realise its aims, but it is unique because it has a distinctive kind of moral power.

Second, *political* orders are distinct in virtue of the fact that in order to be a legitimate political authority, one needs to command the obedience of subjects and be in a position to ensure their compliance: "authority means (...) the authority to make law and to enforce it, by virtue of an actual monopoly of coercive power together with the *general acceptance*, by those governed, of the sovereign's exclusive right to employ it."[16] Obedience is an empirical phenomenon: an authority commands obedience when those subject to it generally accept its commands as authoritative.[17] Thus, Nagel subscribes to a substantive view that merges empirical and normative elements to explain the state's uniqueness: the state has a special moral power, and it has this moral power at least partly in virtue of the empirical fact of the (exclusive) obedience of subjects and its monopoly of force for a given territory.[18]

But there is also a third element, which focuses on the conditions under which obedience is possible. Nagel says the following: "Authority exists only if it is accepted, but it will be accepted only if it is seen as legitimate, in virtue of the way it is exercised."[19] It is in part this empirical assumption, namely that obedience will only be forthcoming when the state's exercise of power conforms to certain procedural norms that gives Nagel's view a distinctly democratic and egalitarian flavour: States have legitimate authority only when those governed accept the state as legitimate, and they will only do so if the state treats them as both *co-authors* and *addressees* of its laws. Once we are no

[16] (Nagel 2010: 93-94). My emphasis.

[17] These features explain why Nagel does not focus on 'coercion' as the central feature that necessitates justification as far as the state is concerned: subjects do not in the first instance obey its directives because they are backed up by threats and sanctions, but because they *believe* in the political order's normative power to impose directives. A political order that (a) does not intend to govern in some sense either in the interest of those subjected or (b) empirically fails to command obedience (not merely compliance!) cannot be legitimate, it is, rather an instance of "pure coercion." (Nagel 2005: 129).

[18] Nagel's account of legitimacy is thus in certain respects like Max Weber's (Weber 2002 part 4)

[19] (Nagel 2010: 93-94)

longer merely the passive recipients of the state's commands or the mere objects of the state's exercise of brute physical force but instead "active engagement of the will of each member of the society" is both demanded and acquiesced into, a new and unique moral situation arises. It is in this situation, and in this situation only, that we have a special kind of standing to demand justification for the state's actions over and above the requirement that the state not violate our pre-political rights: we have standing to demand justification not only for the state's procedural aspects but also regarding the state's enactment of a system of private property. So it is at this stage of the argument that Nagel introduces substantive justice.

Similar to the previous version of the non-voluntariness argument, we may now ask what practically follows from this argument. As we just saw, Nagel believes that his argument from *dominion* and authorship is not one route by which we may arrive at substantive justice, but it is in fact the only such route. What explains this claim to exclusivity? The key point is that obligations of social justice are "fully associative" and that only states presently create the necessary associations amongst persons to bring into existence such demanding obligations. One reason in support of his argument is the problem of assurance: "Separate individuals, however attached to such an ideal [of justice as fairness], have no motive, or even opportunity, to conform to such patterns or institutions on their own, without the assurance that their conduct will in fact be part of a reliable and effective system."[20] So although Nagel rejects a purely Hobbesian account of the state's justification, he does insist on the strong connection between the feasibility of justice and the existence of a sovereign, a political power capable of ultimately ensuring that laws are observed. Since institutions beyond the state –including the EU- are not sovereign in this sense, they are not proper objects for concerns of justice at all.[21]

[20] (Nagel 2005: 119)

[21] It is for this reason that this position has been called 'strong' statism (Cohen, J. & Sabel 2006: 148-149)

5.3 Problems with the coercion-based argument from non-voluntariness

Justification. I want to start this section by problematizing the idea of a special justification, hinted at in premise (2) ("that coercion can be all things considered justified") and specified in premises (4) ("that coercion requires a particular kind of justification to those being coerced") of Blake's account. To that end, consider the following short example: A ferry full of passengers unexpectedly encounters a powerful storm, which brings it close to capsize. Many passengers run towards the lifeboats. The captain, knowing that nobody could survive the storm in the small lifeboats, and having specific knowledge of the ferry's static properties -but insufficient time to explain these properties to the passengers- orders the crew to coerce passengers (via threats or by simply pushing them around) to split into different groups and to stand at various locations across the ship's decks and cabins to accurately balance the ship. As a result, the ferry weathers the storm and no passenger is harmed.

Let us assume, following Blake, that in threatening and pushing around the passengers, the ship's crew has coerced them. So we may ask what justifies these coercive acts. The most intuitive answer that suggests itself is the following: Coercion is justified only in case the reasons for coercing outweigh the reasons against it. The decisive reason that speaks in favour of coercing in the example is that if the crew had not pushed around and threatened the passengers, chances were high that nobody would have survived the storm. Now one aspect of the consequences of coercing others is the fact that coercing people by threatening them and pushing them around is to treat them in ways in which we should not ordinarily treat people. But of course, the example given is one where the crew has very weighty reasons to coerce passengers, and in such cases the reasons against coercion must be weighed or balanced against the reasons that speak in its favour. Deciding whether coercion is justified must evidently include the judgment that we should not ordinarily treat people in those ways, but it must also include all the other moral and non-moral reasons that speak in favour or against those coercive acts.

Two crucial points that follow from this, emphasised by a number of authors, are that, first, our all things considered judgement of whether or not coercion is justified in a

particular case is underdetermined by the fact that we should not ordinarily act coercively, and, second and more importantly, the reasons that go into a successful justification of coercive acts can be of many different kinds.[22] More specifically, these reasons need not be only those reasons that we have to coerce or not coerce in the light of the interests or autonomy of those that we would harm by doing so: Imagine that in our example all those people that needed to be shoved around and threatened to step away from the lifeboats were the more eager individuals who had already secured a life-vest that would ensure that they will come out (largely) unscathed if the ferry keels over. It should be clear that *that fact* should not bar us from coercing them. The upshot of characterising the justification of coercion in these terms is that it is compatible with many different accounts of the moral reasons that we have to act. For example, and to come back to the issue of global justice and state coercion, a (non-relational) act utilitarian may maintain that state coercion is justified if and when it increases average wellbeing globally. So on what I suggested was one initial plausible understanding of how coercion is to be justified, coercion cannot serve to fix either the *scope* (to whom is justification owed?) or the *content* (what consequences must it secure?) of what renders a justificatory act successful.[23]

Coercion's properties. But Blake thinks that in relation to coercion, things work somehow differently. When the state coerces citizens, it owes those citizens a different kind of justification, namely one that addresses their specific complaint against (the pro tanto wrong[24] of) coercion. Thus, the relevant question becomes whether the state in some sense harms its subjects (e.g. by intentionally or negligently causing a setback to their interests) and therefore owes them a special justification or 'compensation' for its coercive actions, even though it makes citizens (all citizens!) better off by coercing them.

[22] (Arneson 2005; Pevnick 2008; Sangiovanni 2010, 2012a)

[23] (Sangiovanni 2012a: 88)

[24] Blake throughout his article speaks of the *prima facie* wrongfulness of coercion. But it is not clear that prima facie wrongfulness can yield the kind of 'compensation' view that he goes on to suggest. An act is prima facie wrong when offhand there seems to be a reason not to do it. A act's prima facie wrongfulness is compatible with there being not a single reason that speaks against it upon closer inspection. But if there could be cases where there is not even a single reason that speaks against acts that are coercive (but at least one reason that speaks in its favor), then it is hard to see how coercion could systematically require compensation. To fit the compensation or 'making whole' view, coercion needs to be a *pro tanto* wrong.

This point directs our attention to Blake's particular understanding of what state coercion is and why it is pro tanto wrongful, i.e. to the premises (2) and (3). Blake's stated view is that coercion is always a pro tanto wrong because it always infringes autonomy. Moreover, he insists that state institutions are always coercive for those subject to them. The harm that the state causes us, it is suggested then, is that it inevitably infringes our autonomy, even if it is all things considered justified. Is this view plausible? We can start by noting that there are two approaches in the literature on (state) coercion that deny these claims: One conceptual position, defended by some legal theorists, is that when the state forces compliance by passing just laws that are backed by sanctions, it is not in fact coercing those subject to its laws.[25] So some people deny Blake's assessment that the state is necessarily coercive (premise 3). An alternative position that also runs counter to Blake's is that when a (just) state forces us into compliance with its laws, it is coercing us, but it does not wrong us or cause us harm in doing so, neither prima facie nor all things considered.[26] We may thus doubt whether state coercion is in any sense at all wrongful, in which case we would be questioning the truth of premise 2 of Blake's argument. These initial observations raise the question which conception of coercion and which account of the particular wrong that is internal to coercive acts fits Blake's view. As I will argue below, none of the potential contenders can convince.

5.3.1 Accounts of coercion

When Blake proposes that state institutions are coercive, he means this to be a *general* claim in the sense that it applies (a) to all states and (b) to all persons subject to state institutions. What aspects of the state can account for the state's inevitable coerciveness vis-à-vis all those subject to it? From the assumed generality of the claim something significant follows in regard of the *type* of coercion, namely that the relevant sense in which Blake must claim that the state is coercive must be *coercion by threat*, which constitutes a distinctive category of coercive acts.[27] Coercion by threat occurs when an

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[25] (Edmundson, W. A. 1995)

[26] This view is discussed in some detail in (Green 1988: 72). A similar suggestion is advanced by (Pevnick 2008).

[27] Others being coercion by physical or psychological compulsion. See the discussion in (Feinberg 1986: 190).

agent forces another to act by creating conditions as a consequence of which the agent herself *chooses* to embark on a particular course of action or to refrain from doing so. A classic case of coercion by threat is that of a highwayman confronting a passerby with a conditional proposal of "your money or your life." What is important here is that under coercion by *threat* –contrary to physical force or psychological compulsion- the coerced agent is in full possession of his physical and mental capacities and the coercer knows and intends this to be the case: when the robber demands the traveller's money, she is in fact typically *counting on* the other's ability to make a rational choice, namely to value her life higher than her possessions and to hand them over.[28] The difficulty for accounts that focus on coercion by threat, discussed in much detail by Nozick in his classic contribution[29], is that once we accept coercion as a kind of act in which the coercee *chooses* to act rather than that she is acted upon, we need to distinguish this kind of intentional action from similar but morally innocuous human exchanges, most obviously from the making and accepting of (non-coercive) *offers*.

To understand more specifically the different accounts of coercion that Blake might adopt to support his dual claim that (a) the law is coercive and (b) that coercion is always pro tanto wrong because it infringes autonomy, it is helpful to look at Nozick's treatment of the subject. Nozick starts by accounting for the purely descriptive central features of coercion by threat in paradigmatic cases such as the one of the highwayman. Nozick presents the following conditions:[30]

(1) P threatens to bring about Y if Q does A
(2) P's reason for threatening Y if Q does A is that P believes this consequence worsens Q's alternative of doing A
(3) Y renders doing A substantially less eligible as a course of conduct for Q than A without Y
(4) Q believes that P's threat is credible

[28] One may thus say that physical and psychological compulsion differ from coercion by threat in that those subject to physical or psychological compulsion do not 'act', but are 'acted upon', as they are incapable of using their full capacity to reason. It is in this sense that both physical and psychological compulsion are involuntary.
[29] (Nozick 1969 [1997])
[30] (Nozick 1969 [1997]: 16-19). To avoid complications, the conditions are simplified by assuming that both parties know the others' intentions, that there is no misunderstanding between them, and that there are no further persons who may be used by one to coerce the other.

(5) Q does not do A

(6) (Part of) Q's reasons for not doing A is to avoid the consequence which P has threatened

At first sight, these conditions seem to propose a non-moralized account of coercion, for none of the conditions requires moral judgement. However, as I already suggested, Nozick goes on to argue that his usage of the term "threat" requires further elaboration: threats ordinarily make their target worse off whilst offers do not, i.e. we can distinguish between threats and offers in terms of their *consequences* for the person to whom the proposal is made by comparing how each of two scenarios affects Q's position.[31] These are (a) the proposal situation, i.e. the one in which Q *actually* finds herself after being confronted with P's proposal, and (b) the scenario that would have followed according to the "normal and expected course of events" in the absence of Q's proposal.[32] If (b) is on the whole better for Q, then P's proposal is a threat and therefore coercive, otherwise it is an offer. Nozick recognizes that his formulation of "normal and expected" is ambiguous and can be interpreted either as (1) what *would have occurred* according to our best judgement of the empirical facts or (2) what *should have occurred*, morally speaking.[33] These two possible interpretations are referred to in the literature as 'natural', 'statistical', 'non-moralized' or 'counterfactual' baselines on the one hand, and 'normative' or 'moralized' baselines on the other hand.[34]

The relevance of the distinctions introduced by Nozick becomes obvious once we challenge Blake to explain how he intends to establish that the state is in fact always coercive from the perspective of its subjects. The problem that he now faces is the following: A moralized baseline account –which insists that the state is coercive because its conditional proposals threaten to make its subjects worse off than they have a moral right to be- would be thoroughly unattractive because Blake's ultimate purpose is to show that specific egalitarian entitlements can be derived from claims about the law's

[31] (Nozick 1969 [1997]: 24)

[32] (Nozick 1969 [1997]: 24)

[33] For additional alternatives, see: (Feinberg 1986).

[34] See e.g. (Edmundson, W. A. 2012; Lamond 1996; Zimmerman 1981, 1983)

coerciveness. But as Sangiovanni observes, a moralized baseline would defeat this project because such an argument "is meant to demonstrate that the *compensation* owed using the correct counterfactual is captured by the pattern mandated by a more demanding distributive standard. But (3) [*what we morally ought to have had*] simply assumes the answer to the question."[35] In other words, if Blake can only demonstrate that the state is always coercive by recourse to some independent account of the moral rights (including property rights) that the citizen has and which the state violates by implementing a system of criminal and private law, it seems that what is really doing the normative work is the specific prior account of moral rights and entitlements, rather than the fact that the state is using coercive means in bringing about a distribution of entitlements.

So Blake should rely on a non-moralized baseline, which seeks to locate the difference between threats and offers in empirical facts about the proposal situation. If the situation that had unfolded in the absence of P's intervention would be better in terms of the options (and their quality) available to Q, then the proposal was a coercive threat, otherwise not. One generic problem with non-moralized baselines is that they face difficulties in picking out wrongfully coercive *omissions*, i.e. cases where the negative consequences of P's proposal result from inaction rather than actively causing unwelcome consequences for Q.[36] But suppose we find a way to overcome this problem. Even then, applying a non-moralized baseline account to the issue of the state's coerciveness forces a severe problem on Blake. If the relevant counterfactual baseline is the one in which *no* state (understood as a legal entity that necessarily wields coercive power) would exist, then it is in fact very hard to see in what respect anybody is made worse off by the state's existence. In the most plausible description of that counterfactual, the existence of coercive laws and a legal system makes us better off compared to the likely alternatives. Perhaps a different non-normative baseline could be established to show in which respect the state makes people worse off: Suppose the relevant counterfactual is the one in which a state would exist but only a particular

[35] (Sangiovanni 2012a: 92). See also his remarks at (Sangiovanni 2010: 36-38)

[36] This is why many contemporary theorists reject non-moralised baseline accounts. See: (Edmundson, W. A. 1995; Frankfurt 1988: 30; Wertheimer 1987: 207).

person would not be subject to coercive threats.[37] Or one where the state would exist but would not need to use resources to coerce people so that every individual could receive a higher share of the social product.[38] Even if one could find ways to dispel the suspicion that these alternatives are extremely ad hoc, the problem that remains is that neither of these baselines applied to the existence of state institutions as such seem able to bring us close to anything resembling comprehensive egalitarian shares.

5.3.2 Coercer-focused accounts

Blake emphasises at certain points of his argument that coercers take a particular kind of *attitude* towards those being coerced, which amounts to a denial of their autonomy.[39] This thought is familiar: we feel that infringements of our freedom take on a specific and independent dimension of wrongness when they derive from another agent's *intentional acts*, or more specifically, other person's intention to reshape and constrain our options so as to leave us no reasonable choice but to act in ways that they choose. Following this thought, some theorists have sought to locate coercion's distinctive wrongness in characteristics that an agent who manages to get somebody else to act must have for the act to count as coercive. Analysing the distinction between threats and warnings reveals this importance of the coercer's intentions.[40] Thus, whether or not somebody should count as coercively threatening seems to depend crucially on whether or not that person has the right reasons for communicating and making proposals.[41] How can we best describe such a coercer-focused account of wrongful action? One approach would be roughly this: P coerces Q when P creates reasons that P believes will induce Q to act in a way that Q would not have had reason to act absent P's creating these reasons and P believes that Q would lack reason to prefer that P create these additional reasons.[42]

[37] (Wollner 2011: 370ff.). Nozick talks about these token-type distinctions in more detail. See: (Nozick 1969 [1997]). Also see (Edmundson, W. A. 1998: 100-101)
[38] Sangiovanni discusses this version (Sangiovanni 2012a: 92).
[39] (Blake 2001: 272)
[40] (Raz 1986: 36) (Yaffe 2003: 351)
[41] (Scanlon 2008: 78-79) (Berman 2002: 51ff.)
[42] For far more a sophisticated account of this kind of wrongful action, see: (Julius, A J 2009; Julius, A.J. 2013)

So Blake needs to show that the state (a) creates conditions that induce subjects to act or refrain from acting and (b) that in doing so the state is acting for the wrong kinds of reasons –roughly in the way sketched above- or is displaying a morally objectionable attitude towards those faced with the conditions that the state has created. Moreover, it must be shown that (a) and (b) combine in such a way that the person subjected in this way are owed egalitarian shares to rectify or compensate this wrong. Now of course the state *does* have control over the outcomes in respect of the sanctions that it threatens to bring about, so condition (a) is clearly met. But for Blake to be able to locate the prima facie wrongfulness in the features of the coercing agent rather than in terms of the consequences that coercion has for the person being coerced, he needs to show that the state in passing and enforcing the coercive rules is in fact displaying the relevant morally problematic attitude towards citizens (and that the correct response to this wrongful attitude is distributive justice).

And showing this, I believe, is very difficult indeed. Insofar as we are concerned with those laws that states enact which are just on independent moral grounds, it seems more plausible to take the view that the state is actually intending to help us to conform to reasons that we already have, and that this attitude is not morally problematic. Now it would be a mistake to deny that creating conditions that give another person reasons to do what she has independent moral reasons to do could not be disrespectful and therefore be an instance of a morally problematic attitude. But the problem here is that when faced with cases in which we ought to reject this kind of paternalism on the grounds that it is disrespectful to interfere with an agent's exercise of determining what moral reasons apply to her, it seems more than a little strange to insist that the correct institutional response should be to let the paternalism *continue* whilst offering 'compensation' in the form of egalitarian shares. The much more plausible view here is that the state can only escape the charge of taking the wrong attitude by enforcing only those laws in which citizens had an adequate say, i.e. laws that in some sense represent the citizens' judgements about right and wrong.

5.3.3 The special case of a property regime

At this point, a defender of Blake may interject that I have mischaracterized the position. We can imagine a state that brings us out of the state of nature but that does not coercively impose a regime of private property on us. It is this particular further aspect of the contemporary state that requires a distinctive justification. The better understanding of the argument from coercion on the issue of distributive justice is the following: When a set of property rights is introduced amongst persons, the result will be a distribution of liberties and duties amongst these persons. Property rights grant property holders a privilege to use their property in certain ways, thereby increasing their freedom or autonomy. At the same time however, a regime of property rights creates duties amongst all persons other than the property owner to refrain from acting in certain ways. So even though having a state makes everybody better off, installing a regime of private property does not: at least for those who have no or very little property, the coming into existence of such an institution *increases* their duties without matching their sphere of freedom in the way that it does for those who own property. As a result, the only way of justifying the state's imposition –the only way of demonstrating that the state shows equal concern for its subjects when introducing a regime of private property- is by ensuring that all those now duty-bound enjoy a sufficient amount of liberty as far as property is concerned that makes up for this imposition.

As I will explain in the next section, I fully sympathise with the argument that property rights are in need of justification, and the fact that the state sets up a comprehensive scheme for their enforcement and reproduction requires a stringent justification to those who incur duties to respect property rights. Moreover, since the duties that are thus created ordinarily apply with particular force to those sharing political institutions with the property holders, there is even some degree of plausibility to the thought that those who are within the scope of the rules of the property regimes (or those to whom

these duties are, in the first instance, *addressed*), have special standing to reject such a regime that at least some of those to whom such rules are not addressed lack.[43]

But the problem in the context of Blake's argument is that once we have spelled out why the state's introduction of a property regime gives rise to demands of justification, we see that *coercion* has (if at all) a purely instrumental role to play. Imagine a state where all coercive power rests with individuals. In such a state, no central coercive power ensures that property rights are upheld. All that happens in this society when disputes about property holdings arise is that courts offer judgements about disputes and grant individuals the right to enforce these judgments regarding the dispute against one another. Even though such a state does not engage in the practice of coercing individuals, it is perfectly reasonable to think that individuals in such a society are owed a justification in respect of those principles that judges apply in adjudicating between competing claims for property. It seems sufficient that judges, arbitration panels and so forth claim the *moral power* to authoritatively pronounce on questions of resource holdings. So the conclusion that can safely be drawn at this point is that Blake's coercion-based version of the non-voluntariness argument fails because it cannot fix either the content or the scope of the kinds of obligations of equality that it wants to derive from facts about coercion.

5.4 Problems with the *Dominion*-based account of non-voluntariness

But perhaps Nagel's account can undermine the pluralism about substantive justice defended in previous chapters. I shall now argue that it cannot. Nagel argues that substantive justice must be part of a justification offered to persons who are made subjects of collective agents that exercise *dominion* in the sense described in section 5.2.2, i.e. persons who offer obedience (and would be forced if they did not), but are at the same time rightfully considered the co-authors of the laws that apply to them and are therefore collectively *responsible* for the outcomes that the collective agent produces.

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[43] I say *some* plausibility, because property regimes are of course meant to ensure property holders both against domestic and foreign infringements.

There is a complication that we face when attempting to determine for what reasons and under what conditions *dominion* may be established. The complication is that *dominion* is a complex phenomenon, or, perhaps more accurately, *dominion* describes a situation in which a number of distinct social phenomena obtain amongst a set of persons. Of course, this is not a problem as such. In fact, what I tried in section 5.2.2 was to point out that Nagel's account tracks more adequately than Blake's the way in which a state conceives –and is sometimes justified in conceiving - of its power over citizens (namely as political authority), and it also provide a richer and more persuasive description of the relationships in which most people in liberal states think they stand – and sometimes do stand- to the state as a collective agent. At the same time however, what is striking is the fact that these conditions -namely the elements of obedience, authority, non-voluntariness and exclusive enforcement in Nagel's argument- upon reflection seem to point to quite separate and distinctive moral phenomena, not all of which may require the same kind of justification. So the best way to assess Nagel's position is to disentangle *dominion* and evaluate the core elements separately.

My discussion of Nagel here is therefore split into three sub-sections: In the first sub-section, I briefly rehearse some arguments against the anti-pluralist strand of Nagel's view by focusing on the presumed requirement of non-voluntariness. In the second sub-section, I assess a second element of Nagel's argument, namely the sociological-descriptive aspect of dominion: to have dominion, collective agents must *claim* to act on behalf of their subjects and the subjects must offer obedience in the sense of *believing* that the authority is justified in creating binding norms. Finally, in the third sub-section, I present what I consider the remaining valuable insights from Nagel's position, namely the idea that collective agents who exercise public power have a pro tanto obligation to treat those subject to their power with equal concern.

5.4.1 Is *non-voluntariness* are necessary condition for substantive justice?

What makes Nagel's view controversial is the fact that it offers a set of demanding conditions that are quite specific to the contemporary state and that it also makes the

further claim that these conditions are *necessary* for all aspects of substantive justice to arise: if we thought that these demanding conditions would simply add up to one amongst several scenarios in which substantive justice were required, the specificity of these conditions would be considered less problematic. So we might ask what renders the further claim about necessity convincing.

As far as the aspect of non-voluntariness is concerned, the necessity claim about dominion and justice stand in a particular need of justification because we can easily think of scenarios where institutions or particular individuals subject to these institutions do not meet the conditions of *dominion*, yet intuitively we feel that at least some of the principles of substantive justice are morally required. Take the idea of fair equality of opportunity: Many liberals feel that even institutions that are voluntary (because these institutions offer those subject to them exit rights that are morally accessible in the sense of not being too costly to exercise) owe those subject to them at least some form of equal opportunity. Even if no member is forced to participate, we feel that churches, unions, universities and so forth have an obligation to offer individuals equal opportunity to influence the decisions that are being reached within them. Perhaps these requirements are less stringent in some of these organisations, but it seems they have a general moral validity nonetheless. Similar points can be made about outcomes measured in terms of distributions of goods in voluntary associations: when a university distributes scholarships amongst its student body, we would be quite appalled to learn that these were distributed on the basis of some kind of favouritism, say family-relations of professors, and it seems very natural to call the complaints that those who have been disadvantaged by this morally questionable pattern of distribution have complaints of injustice.[44]

A similar argument can be raised when we consider those who are subject to state institutions but have freely come to be so subjected and continue to have acceptable (i.e. not unreasonably costly) avenues of avoiding the application of the state's laws. Sangiovanni illustrates this thought with the example of a well-to-do French immigrant

[44] A similar point is made in (Miller 2013: 157)

to the United States who takes up a position only to learn that she is discriminated against in various ways. Even if we stipulate that the French immigrant retains the ability to go back to his home country at not too large a personal cost, we find it obvious that the way in which the laws differentiate between her and her co-workers are unjust.[45] Moreover, the possible objection that the immigrant might have consented to receiving lower pay than the domestic worker for similar work when entering the US is beside the point: Rather than showing that obligations of substantive equality depend on voluntariness, what the agreement to lower pay than other co-workers shows is that we have the moral power to waive otherwise valid moral requirements.[46]

What does Nagel suggest against these plausible objections? At times, it seems that his argument relies on the thought that substantive justice in the absence of coercive institutions would simply be impossible: "Without the enabling condition of sovereignty to confer stability on just institutions, individuals however morally motivated can only fall back on a pure aspiration for justice that has no practical expression, apart from the willingness to support just institutions should they become possible."[47] Aside from the fact that Nagel's quite obviously overstates his argument here –after all, it does not appear difficult to think of 'practical expressions' and actions over and above a display of 'willingness' that individuals may engage in to bring about just and stable institutions in the absence of sovereign power- it seems that Nagel introduces the issue of stability at the wrong level. The issue of stability formed an important part in Rawls' thinking about justice. But the important insight that Rawls' writing on the subject contains is that we should consider issues of stability as *one crucial element* of the institutions that we should build and the principles that should govern these institutions: institutional stability is one desideratum of a set of principles to govern basic institutions.[48] Contrast this insight with Nagel's position, which insists that absent institutions that *already* enjoy

[45] (Sangiovanni 2012a: 107)
[46] (Sangiovanni 2012a: 107-108)
[47] (Nagel 2005: 119)
[48] (Rawls 1999c: 434ff. §76). To be sure, Rawls also maintained that aspects other than sovereign power to enforce the laws would (and should) contribute to stability in a society organized in accordance with his principles, hence he speaks of "stability for the right reasons" (Rawls 1995: 142)

sovereignty and therefore stability, we lack reasons of justice to build new institutions.[49] As A.J. Julius observes, the fundamental problem with Nagel's assumption is that he seeks to link justice to sovereignty (and those other components of *dominion*) at a conceptual level, thereby lacking convincing arguments how we should make sense of instances where we believe that individuals have duties of justice to reform immoral institutional practices that are not endowed with sovereign power.[50] So it strikes me that whatever the overall merit of Nagel's considerations, we should reject at least the assumption that demands of justice will only ever arise where *dominion* has already been realised amongst a set of persons because such an assumption begs too many of the important questions that we want to debate when discussing justice beyond the state.

5.4.2 Claims to authorship and obedience

One distinctive feature of dominion is that a collective agent only exercises it when the agent claims to speak on behalf of those subject to it and when those subjected believe that the agent has the moral power to create duties for them and incur responsibility on their behalf. I now want to analyse this aspect of Nagel's view in more detail. My argument here is that rather than focusing on the empirical fact that collective state agents claim to speak on their subjects' behalf, and on the sociological question whether or not those subjects take the attitude that the state is justified in so doing, we need to focus on whether or not the state is actually entitled to act as a fiduciary of those whom it represents. Once we turn to this question, we see that the fiduciary account contains an important truth about equal concern for the interest of those on whose behalf it is exercised, but is nonetheless limited in that it relies on a prior account of entitlements and does not set all things considered limits on who must be included in considerations of distributive justice.

What makes the position distinctive is the fact that over and above considerations of non-voluntariness, Nagel adds conditions referring to claims about authorship and

[49] "[S]overeign states are not merely instruments for realizing the pre-institutional value of justice among human beings. Instead, their existence is precisely what gives the value of justice its application (...)." (Nagel 2005: 120)
[50] (Julius, A J 2006: 183).

obedience to the conditions for *dominion* to arise. It strikes me that the best reconstruction of his two arguments in this regard is the following:

Obedience

(1) Dominion is a prerequisite for concerns of justice to arise

(2) Dominion is only realised when a state is a sovereign and can therefore permanently and reasonably efficiently ensure a political order in which justice is observed

(3) People will only permit a sovereign to create a stable and reasonably efficient political order when they believe that the sovereign is endowed with the moral power to issue binding commands. (Force alone is unlikely to create a stable and reasonably efficient political order.)

(4) The belief in the state's moral power to issue binding commands is necessary for dominion (from 2&3)

(5) The belief in the state's moral power to issue binding commands is necessary for justice to arise (from 1&4)

Authorship

(1) Dominion is a prerequisite for concerns of justice to arise

(2) Dominion is only realised when a state makes subjects both addressees and joint authors of its laws

(3) Subjects are joint authors of the law if (and only if) the state claims to speak in their name in passing and enforcing laws

(4) The fact that the state claims to speak in the subjects' names is necessary for dominion (from 2&3)

(5) The fact that the state claims to speak in the subjects' names is necessary for justice to arise (from 1&4)

So according to *obedience*, justice does not become a concern unless and until citizens display the relevant attitude of accepting the state as a political authority, whilst according to *authorship*, states have no obligations of justice unless they claim to speak in the subjects' names and thereby make them co-authors of the laws. The general problem with both these arguments is that Nagel fails to distinguish between some features of a political order that need to be in place as a matter of instrumental necessity

for justice and legitimacy to be realisable and the *moral* considerations that require us to evaluate a political order in terms of these concepts. So in regard of *obedience*, we should say that whilst Nagel has identified a crucial instrumental enabling condition for a legitimate state that is stable and reasonably efficient to be possible, it would be a mistake to believe that facts about the attitudes that subjects display somehow bring the normative concerns of justice and legitimacy into existence.

Just consider the consequences of determining the applicability of justice by reference to empirical attitudes: Imagine a legitimate and just state, say a liberal democratic one in which fair equality of opportunity and the difference principle have been realised. Now suppose that a handful of wealthy businessmen, frustrated by their high level of taxation, embark on a campaign to undermine the state's perceived legitimacy, say by financing anti-government lobbies and media sources that incessantly claim that the state harms the hard-working population and only represents the interests of the irresponsible, lazy, weak-willed, etc. Suppose their effort eventually succeed in such a way that at least the richest 1% of the population no longer believe that the state can legitimately introduce legislation that is morally binding for them. Clearly, it seems perverse to make our assessment of the question whether or not these citizens have obligations of justice toward their fellow citizens *depend on* whether or not the questionable campaign of the rich businessmen can convince the top 1%. For surely what we should say about this example is that these businessmen have obligations of justice towards their co-citizens and that these obligations are normatively prior to any kind of attitude that citizens do or do not have towards the state. And similar considerations must apply to *authorship* as well. For again, the argument has the perverse implication that a state that stops claiming that its addressees or a group amongst them are also its co-authors could thereby avoid the moral requirement of justifying its conduct to them in terms of obligations of justice.[51] Why should this be a valid ground for abandoning our conviction that states owe equal concern to those over whom they exercise power?

[51] In fact, this appears to be Nagel's attitude towards the concerns of foreigners who are prevented to enter the territory of another state. (Nagel 2005: 129-130)

Thus, we should conclude that there is a fundamental problem with including as necessary conditions for justice to have purchase facts about attitudes and claims that permit agents to avoid the application of such standards by simply shedding off these attitudes or stopping to make the relevant claims. To be sure, the relevant attitudes of obedience (i.e. the belief that one has a moral obligation to follow the law) may be instrumentally indispensable to create a system of government that is stable and reasonably efficient in maintaining public order –this was Max Weber's insight. But that fact is clearly independent of the question when and why a justification is owed to those on whom such norms are imposed and against whom they are enforced.

5.4.3 Fiduciary obligations and equal concern

A more promising way to approach the question when obligations of justice arise starts by investigating under which circumstances a state agent is *justified* to speak on other persons' behalf in such a way that the agent's actions incur responsibilities for these persons. Put differently, when can we say that the state's *claim* to create binding obligations for subjects by speaking in their name actually succeeds? Having identified these circumstances, we might then ask whether a state that has this moral power might also be one that has obligations of substantive justice. Focusing on this question, it seems to me, can help us to recover the one important true insight from Nagel's position.

Speaking on somebody's behalf for liberals generally requires some kind of authorization. Such authorization can occur more or less explicitly, and it can grant other agents various degrees of discretion in terms of the scope and content of issues on which one may speak on another's behalf. At one extreme, we may think of limited, non-discretionary authorization: For example, a shareholder may authorize her lawyer to vote with "yes" in the annual shareholder meeting on whether or not to approve the activities of the board. So the lawyer may speak on his client's behalf only in regard of one issue and she has no discretion concerning the content (whether to approve or disapprove). For authorization of this non-discretionary type, we require no particular moral principle regarding the way that the lawyer ought to act when speaking on the

client's behalf. In a sense she is merely the executor of the client's will on that particular occasion.

But things get more difficult when we broaden the scope and content of the authorization such that the initial authorization no longer specifies the particular conduct in which the authorized agent may engage and, especially important, when the authorised agent acts on behalf of more than one person. In such cases, the authorized person becomes a 'trustee' and has 'fiduciary obligations', and we require some principles for evaluating whether the trustee is properly conducting her moral task.[52] One aspect of such a plausible conception of the moral rules that should guide the trustee is that the she must in some sense represent the interests of its principals.[53] Thus, when we want to determine whether a trustee is justified in acting on another person's behalf ("speaking in the other's name"), we need to establish that the trustee is authorized and that the trustee is living up to her fiduciary obligations. Since Nagel claims that the state is entitled to speak on behalf of its subjects (considered to be its principals) across a wide range of issues, some moral principle guiding trusteeships and fiduciary obligations seems to be required in order to establish whether or not the state is justified in speaking on everyone's behalf. What is crucial for Nagel's argument here is that independent of what the principals' interests are, fiduciary agents have an obligation to treat those interests entrusted to them with *equal concern.*

Of course, the fact that a fiduciary needs to treat the interests of its principals with equal concern leaves to some extent open what is to be done all things considered, not least because acting as a fiduciary does not relieve the agent from more general moral requirements. But the nature of the fiduciary obligation puts at least some constraints on the way in which the fiduciary may act towards those on whose behalf it is purportedly acting. Can we derive anything approximating egalitarian duties of justice from the fact that a fiduciary must act with equal concern for the interests of its principals? The most promising account here is one akin to Blake's, except that it avoids the 'red herring' of coercion: One aspect of the modern state's claimed moral

[52] See the detailed discussion of 'fiduciary' obligations in (Sangiovanni 2012a: 103ff.)
[53] (Sangiovanni 2012a: 105)

power –exercised on behalf of its subjects- is the fact that it introduces, revises and enforces a regime of property rights. In the first instance, a regime of property rights sets up rules that create a set of liberties and duties: Person A's property in a book gives A the right to do, within limits, as she sees fit. She may read the book, fire up the oven with it, or simply put it in a shelf. Crucially, A's property in the book makes all other persons duty-bound not to take away the book, not to read it without her permission, and so forth.

It seems clear that, other things being equal, owning property positively increases one's overall freedom, whereas being duty-bound not to interfere with another's exercise of his liberty to do –within limits- what she wants to do with her property reduces freedom.[54] Now if we imagine a society in which individuals have roughly equal property holdings, then the introduction of a set of property rules upholds a symmetrical position amongst persons: A gains the privilege to do as she wishes with a certain amount of resources, but at the same time A now has a duty to respect B's and C's ownership of their respective bundles, which will constrain her freedom. Jeremy Waldron calls a situation of this kind one in which there is "reciprocity of rights and duties."[55] Introducing such a property regime does not *relatively* disadvantage any of the state's principals.

But of course, property regimes in the real world are not like that; they do not respect rights-duty reciprocity because generally speaking, a regime of private property results in some people having more property than others, and, conversely, it results in some people suffering an increase in their duties to refrain from interfering with other people's property without much enjoyment on the liberty-side because they have no (or next to no) property for exclusive use that would make up for this increase in duties. Now the relevant question is under what conditions the introduction and enforcement of such a set of liberties and duties may be interpreted as showing equal concern to all principals. A liberal response to this question will insist that justification must meet the

[54] (Waldron 2003b: 44)
[55] (Waldron 2009a: 165)

requirement of 'justifiability to each', which importantly includes the worst-off person under the relevant regime of property.

It is not difficult to see how considerations of this kind at least strongly point in the direction of substantive principles regarding the distribution of resources, because everything else points towards a lack of equal concern. Of course, it may not bring us all the way to egalitarian or maximin distributions, but it clearly shows that concerns of relative fairness regarding the distribution of benefits and burdens that any property arrangement brings with it will have purchase. Thus, when a trustee sets up a system of property rights for its principals, she must act in a manner that shows a form of equal concern for all of them; and creating a system that reduces the freedom of some principals at the expense of others is inconsistent with the symmetrical position that the trustee has towards these principals stemming from its fiduciary role. This, I believe, is the true element in the argument advanced by Nagel and Blake.[56]

Andrea Sangiovanni discusses and criticises the fiduciary argument. As he sees it, the problem with the fiduciary account of the state is that the mere idea of "acting in somebody's best interest" underdetermines what the state in its role as a fiduciary must do and consequently, we cannot derive moral obligations with a specifically egalitarian content and limited scope from the mere fact that the state needs to act in such a role.[57] I think that Sangiovanni is correct about the second point, namely that fiduciary concerns cannot settle the all things considered question about what the scope of substantive justice ought to be. The reason is that what the fiduciary ought to do depends on the prior interests and moral entitlements that its principals bring to the table, so to speak. But by proclaiming that fiduciary obligations do in no way constrain the *content* of principles of justice, Sangiovanni is overstating his case: the fiduciary role does create pro tanto reasons of equal treatment amongst the fiduciary's principals.

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[56] See e.g. Ronald Dworkin: "No government is legitimate that does not show equal concern for the fate of all those over whom it claims dominion and from whom it claims allegiance. Equal concern is the sovereign virtue of political community (...) and when a nation's wealth is very unequally distributed, as the wealth of even very prosperous nations now is, then its equal concern is suspect." (Dworkin 2000: 1)

[57] (Sangiovanni 2012a: 104-105)

So to be clear, the fiduciary argument for substantive justice is a conditional one: *if* citizens have moral entitlements that they can transfer to the state –e.g. entitlements to resources, territory, the fruits of their labour etc.- *then* the state, qua being an agent of public power (that is, qua being an agent with power whose exercise is justified solely by reference to the interests of those over whom it is exercised), owes its subjects equal treatment. Perhaps we discover that subjects also have a natural duty of justice to transfer resources to those who currently lack the ability to create a just and legitimate state. Or suppose that subjects collectively only are entitled to the exclusive use of a fraction of the resources that they are presently controlling within the system of property that the state sets up and upholds in their name. Even if we determine that these resources belong to others and can therefore be no longer considered to fall within the domain of what the fiduciary can rightfully control on its principals' behalf, it remains true that in respect of those entitlements that the principals have rightfully transferred to their trustee, the fiduciary needs to treat them with equal concern, which quite plausibly means an equality-inclined distribution of property.

A plausible objection to the argument just advanced would be the following: Whilst it is true that a fiduciary has equal obligations to each of her principals to advance her interests, it is a mistake to conclude from this that the fiduciary has an obligation to advance their interests equally. So the question is how these two are related. And until I have offered an account of this relationship, we cannot conclude that substantive justice amongst principals of the state's fiduciary concern follows. Accepting this challenge, I think that some reflections on more concrete examples (like the role of a fiduciary who must distribute the payout from a major settlement) suggest that the most plausible constraint on fiduciary action is this: unequal distribution must be traced to unequal interests (or unequal prior entitlements, if they exist). So if there are unequal interests or unequal entitlements to start off with, then the fiduciary obligation does not require substantive justice.

What the objection points out is that the argument I have provided is merely a sketch that requires further argument about the interests that go into the fiduciary task and the effect that the exercise of public power has on individual persons. But it seems that the

implicit assumptions that will turn the fiduciary obligation into one of substantive justice are quite convincing. These are, roughly, that (a) persons subject to state power have equal interest in freedom, the further thought that (b) the interest in freedom is distributed equally, that (c) these interests are affected roughly equally by the existence of laws, and that (d) there is no good ground for thinking that anyone has strongly unequal entitlements that precede the fiduciary's responsibility to establish a system of property. At least amongst those adhering to a liberal conception of political morality to which this thesis is addressed, the plausibility of these conditions should be obvious.

5.6 Conclusion: The EU as a fiduciary of EU citizens

This chapter has been primarily theoretical in nature: its aim has been to consider the force of arguments that see requirements of substantive justice solely as a response to facts about the non-voluntariness of institutions because such a position would be incompatible with the conception of substantive justice that I advanced. To vindicate the approach developed in previous chapters, I pointed out why at least the stronger versions of the two most prominent arguments of the non-voluntariness family are unconvincing. Nonetheless, I argued that the thought that institutions have fiduciary obligations towards those subject to public power is an important one and can serve to explicate the fact that state's owe equal concern to those whom they govern, which plausibly yields comparative principles of resource allocation in the domain of property rights.

What I want to do now in the remainder of this conclusion is to point out how the fiduciary argument developed by Nagel, once interpreted in the way I have just suggested, actually supports the view that EU institutions are subject to requirements of substantive justice. As should be clear from the discussion in chapter four, the EU – within a limited domain- claims to be the trustee of the member states and individual persons for whom it sets up a regulative scheme, which includes many directives determining how property in the EU can be held and used, what goods can be produced, and so forth. In exercising such authority over the regulation of property amongst EU citizens, the EU frequently takes decisions that have important distributive

consequences: in some instances (e.g. in relation to the structural and cohesion funds that we discussed in the previous chapters) the EU directly disperses financial benefits. In other instances, its organs use their authority to create rules that have indirect effects on property holdings and economic activity amongst EU citizens, thereby distributing advantages, economic opportunities and risks. Moreover, the EU has found ways of ensuring the compliance with these rules, even without using outright coercion. But in claiming this authority to set up rules and in ensuring that they are complied with (whether through the use of coercion or not), the EU incurs fiduciary duties: it must treat the interests of those over whom it governs fairly and judiciously.
If we accept for the moment that the EU does not merely *claim* to speak on behalf of member states and citizens but is actually justified in doing so, for example because it is properly democratically authorized, then in order to live up to its fiduciary obligation in the domain of property regulation, that is, in order to show that it exercises the public power to determine resource holdings that has been entrusted to it in a manner that displays equal concern, it must ensure that huge imbalances in terms of the benefits and burdens that stem from its exercise of public power do not occur.

In closing the discussion of non-voluntariness in this chapter, I want to point out finally that it has not been my argument here to show that facts about the voluntary and consent-based character of the EU at the level of member states, which I did not fundamentally dispute as a matter of empirical fact, do not *matter*. The fact that the EU is in some respect a political order that is based on the consent of its member states *does* have crucial implications for our thinking about its most desirable instantiation. But first and foremost, the complex and untidy ensemble of consent by democratic collective agents, popular sovereignty and inevitable transnational entanglement calls for functioning procedures that balance supranational democratic decision-making with collective autonomy at the member state level. Distributive justice is related to non-voluntariness only indirectly and contingently: first, through the idea that fiduciary obligations only arise in the presence of adequate authorization, second, because certain levels of unequal holdings in goods will almost inevitably lead to unacceptable inequalities of power that would undermine the workability of a procedurally just

institutional mechanism that balances individual member state interests with supranational democratic decision-making.

Chapter 6

Indirect transnational arguments

6.1 Introduction

The last two chapters advanced direct transnational arguments for substantive economic justice at the EU level: whilst chapter four made the positive case that some of the reasons for equality-inclined principles of income and wealth as well as fair equality of opportunity are required at the EU level, chapter five sought to dispel the argument that the EU does not require substantive justice because it is a voluntary association that lacks coercive enforcement power. In this chapter, I turn to the second category of arguments that support the claim that substantive principles of social justice apply to the EU, namely those that I have called *indirect* transnational arguments. Recall that the idea here was that some institutional requirements do not derive directly from considerations of fairness that bear on basic institutions, but they derive from the fact that such institutions should enable and foster certain kinds of relationships, namely relationships of equality, amongst those subject to them. As far as the transnational version of such an argument is concerned, we can summarize its main steps as follows:

(1) Social equality amongst all EU citizens is a valuable and feasible political ideal
(2) Reducing EU-wide economic inequality is one essential component in any successful strategy to realise 'EU social equality'
(3) Reducing economic inequality amongst EU citizens requires us to implement substantive principles of economic justice at the EU level

Thus, implementing substantive principles of economic justice is required in order to realise the valuable ideal of social equality amongst EU citizens. The aim of sections four and five in chapter two was to render plausible the general logic underpinning premises (2) and (3) in an institutional context, i.e. to explain why social equality demands particular institutional conditions that include the economic organisation of society in-line with relatively modest material inequality and a social minimum.

However, if this argument is to do any work in the context of the EU, what I have yet to do is to show that premise (1), the idea that social equality is a valuable and feasible political ideal amongst persons who do not live together on the traditional terms of citizenship within a nation state, is a plausible claim. Vindicating premise (1) is the task of this chapter. I do so in four steps: In the next section (section 6.2), I develop a more detailed preliminary answer to the question when and why we have reasons to value social equality. Subsequently, I introduce a number of 'restrictivist' arguments that have been put forward in the context of philosophical discussion about global politics, that is, arguments that seek to undermine a concern with social or relational equality at a global level. These arguments come in two varieties, namely (a) those that put into question whether social or relational equality is possible or feasible beyond the confines of the nation state, and (b) arguments that question the moral relevance of rendering transnational relationships more egalitarian. In the fourth section, I develop a number of general responses to these restrictivist arguments. Finally, in section five, I show why the EU context in particular gives rise to justified demands for social equality. Section six concludes.

6.2 When and why does social equality matter?

To develop a considered view about whether or not the ideal of social equality may have purchase amongst EU citizens considered as a group, we need first to gain a more general idea of when the ideal of social equality may be either possible or desirable to characterise the interaction of human groups, that is, we need to understand 'when' and 'why' social equality may be valuable. Let me turn first to the 'when' question, which I think can be more easily answered by reflecting about other contexts in which relational equality matters. If we think about personal relationships, it seems obvious that we attach more urgency to the realisation of relational equality in those contexts where the relationship has a significant impact on the wellbeing of those participating in it. Thus, we feel that it is more important to conduct marriages and life-partnerships on an egalitarian footing than it is to conduct voluntary membership in clubs and associations on the basis of equality. There are no reasons to think that similar considerations do not apply when we move from personal relationships to larger sets of persons who

interact with each other. It seems to me then that we can approximate the urgency of conducting relationships amongst larger sets of persons as equals by reference to three criteria, namely (a) the depth or intensity of their interaction, (b) the expected permanency of their social engagement, and (c) the reasonable unavoidability of the involvement.

Let us consider these in turn by looking at the example of the relations amongst permanent citizens of a state: The first aspect, depth and intensity, essentially measures how dependent persons are on one another to satisfy their preferences and needs, broadly conceived. This concerns not merely their degree of economic interaction for the satisfaction of material wellbeing, but also the question of how encompassing their social relationships are across different spheres of social esteem and recognition, i.e. those elements that are essential for individuals to build and sustain a secure sense of their own worth (e.g. Rawlsian self-respect). Now in the context of a closed (idealized) nation state the depth and intensity of interaction amongst the set of persons subject to it is quite encompassing. People share the economic and political institutions that comprehensively shape their material wellbeing and, moreover, they interact in the state's public sphere across various social spheres, thereby developing self-respect (or not).

The second aspect, permanency, is a precondition for social relationships to develop: only where there are patterns of interaction and expectations about future behaviour and communal practices can we ask meaningful questions about what values should characterise relationships when these are not conducted on the basis of actual personal interaction. One-off encounters amongst nomads at an oasis may give rise to questions of distributive fairness, but this seems to track moral concerns quite distinct from the thick web of reciprocal expectations that we consider the subject of equality in relationships.[1] The measure is clearly one of degree: Social equality may well become a moral goal amongst a group of students thrown together in a remote location for a six-week summer camp. But the urgency of realising it there seems pale by comparison to

[1] For a discussion of this point, see (Kolodny unpublished: 39)

citizens living together on permanent terms in a state. The final aspect, unavoidability points to the fact that we believe that specific justificatory requirements apply where people cannot reasonably exempt themselves from social interaction. Aside from whether or not persons can exit social arrangements without incurring costs that would make it unreasonable to do so, one important indicator of unavoidability is the degree to which interaction is grounded in public social norms and institutions because these both entrench and amplify social distinctions: no single person can change such norms unilaterally, and all participants to social interaction recognise differences in social status independent of whether or not they have engaged with a specific person on an individual basis before.

Why is social equality valuable? Even if I have pointed out in the last paragraphs what factors in the interaction amongst a large group of persons may increase our sense of urgency that their relations should be relations amongst equals, some will insist that I have not answered the more basic question, namely what reasons we have in the first place to realise social equality. The thought is that only once we have understood the goals that are being served by realising the ideal in the context of domestic society can we assess whether those goals are similarly served when we introduce social equality amongst persons who share supranational political institutions in the EU or globally.

Again, I think we can best approach this fundamental question by looking at the reasons we might have for considering social equality valuable in the context of domestic society. It strikes me that there are two kinds of responses we can offer, which we might call respectively a 'holistic' and a 'disaggregative' answer. One 'holistic' response is formulated by Miller who suggests that we value a community characterised by social equality because "it aspires to be a society in which people deal with one another simply as individuals, taking account only of personal capacities, needs, achievements, etc., without the blocking effect of status differences."[2] This suggestion invites the question *why* we should aspire to live in a society in which people relate to one another 'simply as individuals'. What value is better realised in such a society? One

[2] (Miller 1995a: 207-208)

initial response may be that such a society is a fairer society: it would be unfair if people had higher social recognition for reasons other than their personal capacities and achievements. However, fairness considerations seem to explain only part of our reasons for wanting to leave in a society of equals. A society scrupulously governed by considerations of fairness may still give rise to differences in status that are deserved because of differences in merit, achievement and the responsible or irresponsible exercise of individual choice. And we may regret this loss of equal status even if it does not constitute unfairness to those now considered inferior.[3] So whilst Miller's 'holistic' description of social equality is accurate, it seems to me that once we are pressed to justify it, we will eventually resort to the conclusion that people should relate to each other in those ways *because they are equals*, in which case we would have to admit that the original claim that we are attempting to defend (that social equality is valuable) has equal or even stronger appeal than any argument we might offer in its favour. In this sense, relational equality, and social equality as its expression in the context of political relationships, has a kind of rock-bottomness to it that makes it a genuinely egalitarian vision of (political) life: we cannot explain our conviction by recourse to other moral values that may be served by its realisation.[4]

A more 'disaggregative' account of why social equality is valuable distinguishes between the different components and consequences of a society organised in accordance with the requirements of social equality and points out the value that each of these has for individuals within that society. Although I think that both accounts of why social equality is valuable are essential to understand the ideal, it strikes me that disaggregating the components of social equality in the domestic case may prove more useful in relation to the question that concerns us here, namely which of the reasons we have to value social equality may be transferable beyond domestic society. This strategy is

[3] Cases of this kind are discussed in both (Scanlon 2005: 214) and (Miller 1995a: 204). See also Walzer's comments about how an inegalitarian society could arise when "the same people were successful in one sphere after another, triumphant in every company, piling up goods without the need for illegitimate conversion (...) this would certainly make for an inegalitarian society (...)." (Walzer 1983: 20)

[4] The upshot of this would be that wherever relational equality could be realised, we have *some* reason to attempt to govern our relationships on egalitarian terms. But of course this does not mean that we have conclusive reason to globally extend the ideal of social equality: equality might conflict with other important values. Even if something valuable is lost when we fail to realize it, the cost of doing so in other respects might simply be too high.

pursued for example by Martin O'Neill, who suggests that we can to some extent distinguish those individual components of social equality that "together constitute a complex background picture of how people should live together as equals."[5] In chapter two, I explained that three distinct inegalitarian bads are relevant when we think about how the ideal of social equality affects the way in which we should design our social institutions (the issues of social justice and legitimacy). These were, first, the badness of unequal power, which gives some people a level of control over social life and its institutions that is inconsistent with all persons living together as equals. Second, the badness of stigma and humiliation which causes some members of society to lack the basal status as contributors with equal standing in public deliberation and decision-making and, third, the badness that occurs when 'complex equality' between spheres of social recognition (in the sense of esteem) breaks down and hierarchies of status come to govern the relations amongst members.[6] Realising the full ideal of social equality at the least requires the absence of all of these inegalitarian bads, because each of them poses a particular harm to those who live together on permanent terms. However, having disaggregated these components of social equality, we can now also ask which of these specific inegalitarian bads might occur in which specific contexts beyond the state, and so we should be able to gain a better understanding of which aspects of social equality may be reasonably extended to these contexts, even if not all of them may turn out to be realistically implementable. Thus, the more nuanced set of questions that we need to ask in relation to the issue of social equality's value and feasibility beyond the state is this: First, which of our reasons in support of domestic social equality translate directly to transnational political contexts? Second, which of the strategies we identified domestically to counteract the evil of social inequality are likely to be available when we move beyond the state? It is in regard of these questions that I now compare the case of the EU and the global sphere.

[5] (O'Neill 2008: 125)

[6] These individual components also track closely O'Neill's account according to which a society of equals guarantees against (i) stigmatizing differences in status, (ii) problematic relations of unequal power and domination (iii) inadequate levels of self-respect, and (iv) "servility and deferential behaviour" that (v) "undermines healthy fraternal relations." (O'Neill 2008: 126)

6.3 Arguments that restrict the scope of social equality

Similar to my discussion of direct transnational arguments in chapter four, I want to begin the discussion of whether or not the ideal of social equality can plausibly be extended to the EU by presenting some 'restrictivist' arguments that have been advanced to demonstrate that extending this ideal *globally* is either impossible because there is no conceivable way of removing the kinds of status inequalities that presently prevail (call these *infeasibility arguments*) or, alternatively, that realising the ideal globally is not morally required (call these *moral arguments*). The feasibility argument maintains that some or all of the relational and institutional facts that need to obtain for social equality to be realistically realisable do not and possibly cannot exist amongst persons globally. The moral argument that I discuss here comes in two versions: A more radical version is that questions of social equality simply do not arise in ways similar to the domestic case because social equality is strictly confined to the relationship of equal citizenship. In other words, nothing of value is sacrificed where social equality beyond the state is not realised. A slightly more conciliatory restrictivist argument suggests that the most important moral reasons that underpin the case for social equality domestically do not arise in transnational contexts. According to this argument then, something akin to social equality might be morally desirable amongst non-co-citizens, but since realising it is much less important than it is in domestic contexts, our reasons for introducing it are outweighed by other concerns. Although restrictivist arguments about social equality are correct in pointing out that realising the ideal of social equality might be more easily implementable in those cases where equal citizenship in a state is already present, and although there are certain considerations that point to the conclusion that the absence of social equality is especially harmful amongst persons sharing the full panoply of social interaction amongst co-citizens, any attempt to *categorically* limit the scope of social equality to the context of citizenship is misconceived.

6.3.1 Moral arguments against transnational social equality

6.3.1.1 Membership argument

The first argument against extending the ideal of social equality beyond particular states or societies is an argument about membership: Social equality is a particular form of relational equality, which is, as the name suggests, an ideal about how particular kinds of concrete human relationships should be conducted. For example, the ideal of spousal equality points to the fact that relations amongst spouses will have an additional dimension of value when they are conducted as relations amongst equal life-partners. Notice the conditional element of the formulation just given: *if* the particular kind of relationship exist, then it will have additional value when conducted as one amongst equals. Now it would obviously be a mistake to infer from the formulation just given that *because* there is value when spouses relate to one another as equals, people should get married. Much else would need to be argued to draw that conclusion.

Using this kind of example as an analogy, the membership argument maintains that social equality is the particular kind of relational equality that gives additional value to the specific relations that exist amongst co-citizens. Thus, the various aspects and requirements in the domain of social justice that stem from considerations of social equality discussed in chapter two should be seen as conditional upon the pre-existence of citizenship: in the same way in which you have no specific moral requirements of spousal equality towards me unless we are married, there are no specific requirements stemming from social equality unless we already share the equal basic status of citizenship. To determine what it takes to be one another's equals in the kind of relationships that exist beyond the confines of citizenship, e.g. amongst those living in the EU, we will need a completely separate account, and there is no straightforward way to derive any egalitarian requirements of that particular relationship from social equality amongst citizens.

6.3.1.2 Non-comparing group argument

A second social equality-restricting moral argument is based on a more empirical observation. The argument is presented by David Miller, who adopts it from an

argument John Rawls made in the domestic context of 'excusable envy' amongst the worse off.[7] The argument is the following: as a matter of sociological fact, people will organise themselves into groups of roughly equal social position. Where this occurs, in-group comparisons become a much more significant factor in a person's development of self-respect than comparisons across social groups do. It is through this mechanism of non-comparing groups, Rawls thinks, that the understandable disposition to feel envy towards those with more primary social goods and therefore to suffer a loss of self-respect can be contained in domestic society, because "these features of a well-ordered regime diminish the number of occasions when the less favoured are likely to experience their situation as impoverished and humiliating."[8] Miller links this argument to the question of cross-national comparison and maintains, quite plausibly, that the tendency towards cross-group comparisons and hence for the development of envy and loss of self-respect amongst members of groups that are worse-off is even less likely to occur across individuals who do not share a state and thick cultural values.[9] As a result, we have much less reason to be concerned with the differences across national groups; even where people do compare their position to those of others in different states, they are far less likely to feel the kind of humiliation, worthlessness and inferiority that Rawls describes as the consequences of unfavourable comparisons with others who are better off within a person's group of reference.

6.3.2 Feasibility arguments

As suggested at the beginning of this chapter, unequal social status arises from widespread assumptions of social hierarchy, and hierarchy presupposes some form of habitual interaction and the formation of at least some common expectations about worth, status, recognition and so forth.[10] Whilst this first point may demonstrate that social equality is unrealisable with those residing in communities that are disconnected from global communication networks and the global economy (e.g. some indigenous

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[7] (Miller 2007: 78)

[8] (Rawls 1999c: 471)

[9] (Rawls 1999c: 470) (Miller 2007: 78)

[10] Some writers use the metaphor that for social equality to be a meaningful ideal, persons must "share a social world", e.g. (Kolodny unpublished) and (Christiano 2008a).

peoples and possibly extreme cases like North Korea), it does not yet say anything specific about whether social equality in cases like the EU might be possible. Thus, for feasibility arguments to present interesting objections against social equality beyond the state at the current stage of globalisation, we need to get one step closer to the specific requirements of that ideal. We do so by distinguishing the empirical requirements that need to be in place for each of the different inegalitarian bads to be possible to arise.

The ideal of social equality requires the absence of different forms of hierarchy. Amongst those mentioned were the absence of hierarchies of power, basic standing, and social status, where this notion was understood as a situation where no group categorically outranks all other groups in terms of various spheres of social esteem (this was the specific interpretation of 'complex equality' I offered). Now the more interesting feasibility arguments against extending social equality claim that at least some of the various aspects that together constitute social equality cannot realistically be introduced between persons who are members of separate states. Since different arguments will attack different kinds of hierarchies that need to be absent for social equality to arise, we can look at these arguments in turn.

Equal basic standing. One first argument notices the indisputable fact of cultural, social and economic diversity that we find globally and insists that it is impossible to define a measure of what it would take for individuals to be considered worthy of basic respect or basic standing across different cultures and societies. Recall that this was the egalitarian requirement that no person should reasonably feel humiliated or stigmatized when relating to others in public. To consider just one piece of evidence that supports this argument, think about the massive differences in terms of material possessions one needs to have to be considered a respectable person in the UK compared to those resources required in places like Niger or Malawi. What this suggests is that there is no such thing as standard of "freedom from humiliation" that we can specify across specific social and cultural contexts. A second point here is the following: Stigma and humiliation, although genuine harms that people can suffer, are social phenomena that presuppose actual personal interaction and social contact amongst those stigmatised and those enjoying a superior standing. Where there is no public sphere of interaction

governed by a determinate set of social norms of respectability, the kind of humiliation or shame that egalitarians oppose in human relations simply do not and cannot arise.[11]

Equal power. In relation to hierarchies of power, we saw that social equality requires that citizens have equal power over those norms and institutions that are constitutive of their relationship as citizens. Whilst it may be very difficult to bring about equal power relations amongst persons residing in different states because powerful individuals and states lack the will to bring this about, this is not yet by itself a clear argument for infeasibility.[12] Rather, the infeasibility argument in relation to the requirement of equal power is the following: The absence of hierarchy in power obtains when we each exercise equal power over those decisions that fall within the scope of the relevant relationship. Thus, relational equality amongst friends requires equal power as far as decisions within the context of our friendship are concerned. This may include questions about how to spend time together, what to expect from one another in terms of material support in difficult circumstances, and so forth. As far as citizenship is concerned, equal power relates to those political and institutional questions that concern citizens together *as citizens*. It obviously does not extend to equal power over how each person conducts his or her private life so long as she individually respects the legal rules over which citizens have equal power. Now the feasibility objection in relation to transnational relationships is that we lack a clear concept of what the kinds of decisions are in respect of which we should have equal power as far as our 'relationship' is concerned. Does the ideal of 'global social equality' require that we all have equal power over all (political) decisions? Or merely over those (political) decisions that affect us all? Or merely those (political) decisions that affect us all equally?[13]

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[11] See e.g. Miller: "Equality of status is important among people who are in daily contact with one another, and who share a common way of life." (Miller 2007: 77)

[12] To be more precise, I mean by feasibility arguments here arguments that question our ability to understand what realizing the ideal of social equality would mean in transnational contexts. Arguments stemming from people's lack of motivation to do what they ought to do –which could also be considered constraints on feasibility- I do not consider here.

[13] The objection here resembles a prominent argument against global democracy according to which global politics lacks one crucial condition that permits domestic democratic decision-making to embody equal respect for each participant, namely the condition that each person has roughly equal stakes in the decisions that are being reached. (Christiano 2006, 2009)

Equal status. The third and final objection concerns the notion of equal status, which was linked in previous chapters to the idea of complex equality across different spheres of esteem whose incommensurability meant that people in their interaction would only rely on their status as citizens with equal rights. One first feasibility objection against extending this idea of such a 'parity of esteem' across national borders again draws on cultural difference. The claim is that there are certain sociological requirements for complex equality to be feasible, namely that persons must have certain forms of culturally shared understanding regarding (a) the spheres of esteem that matter in the construction of social status, (b) the criteria of ranking internal to spheres of esteem, and (c) that they must have to some extent overlapping beliefs about outranking in which spheres is sufficient to constitute overall superiority (and thus lead to unequal status). A second argument about feasibility in relation to equal status is this: The logic of the complex equality argument is that different spheres of esteem are incommensurable and that therefore the only form of 'ranking' on which people can rely in their public interaction is their common political status of equal citizenship. But there is no such 'fall-back' status globally, and it is difficult to imagine what that status could be other than citizenship. So unless those favouring social equality beyond the state actually mean to introduce a global state with equal global citizenship, there is no conceivable way of realising equal status (in the sense required by complex equality) amongst persons beyond the state. As a result, transnational equal status, even if it is conceivably of value, is not realisable so long as individuals remain citizens of separate states.

6.4 Assessing the equality-restricting arguments

6.4.1.1 Membership

I begin with the membership argument explained in the last section, which insisted that citizenship is a clear pre-requisite for social equality to arise as a moral concern, and that social equality in the domestic context provides no guidance to relational equality amongst those subject to political institutions beyond the state. This simple argument from membership is unpersuasive. First, as my discussion in the previous chapters sought to establish, there are in fact common features that we see in relationships of

various kinds when they realise relational equality, namely the basic conditions of equal power and equal standing/recognition. Thus, it would be misleading to suggest that an account of what it takes to relate to others who are subject to political institutions at the EU level as equals will be radically disconnected from the ideal of social equality I have described in relation to domestic society: at least some aspects will be analogous or even identical. Second, consider the pervasive implications that would follow if existing *official* membership rules would be the condition for the moral concern of social equality to arise. As Rekha Nath points out, it would follow from this assumption that people who are unjustly denied equal membership as citizens within states (e.g. women prior to universal suffrage, ante bellum Afro-Americans etc.) had no claim to be considered as social equals, simply because these further claims are somehow only morally important once there is equal citizenship.[14]

To escape this unpalatable conclusion and to have the argumentative resources to criticize unjust exclusion from citizenship, those linking social equality to the pre-existence of citizenship must provide some account why people who live in proximity and interact in specific ways should have common citizenship characterised by equal rights to begin with. But once they offer such an account, say in the form of conditions x,y,z that render co-citizenship morally necessary, it seems reasonable to ask whether some of the consequences that flow from equal citizenship on their account, for example the requirement of social equality, might not also be morally desirable where some but perhaps not all of the conditions that speak in favour of equal citizenship are present but equal citizenship is not (yet) realised. Those seeking to restrict social equality to persons who already share equal citizenship might then insist that in spite of conditions that favour equal citizenship, the realisation of social equality is *impossible* unless there is a basis of political equality, and, as it turns out, the only such basis that we know of is equal citizenship. This however would be a quite different argument, namely the one about feasibility absent equal basic rights discussed at the end of the last section.

[14] (Nath 2011: 609-610)

6.4.1.2 Non-comparing groups

The non-comparing group argument maintained that social equality is not a concern beyond the state because people are less likely to compare themselves and their material circumstances with those living abroad, and even where they do so, the effect of such comparisons is unlikely to have similarly damaging effects for their sense of self-worth when compared to the domestic case. There are two responses to this argument. The first response is to highlight a problem with the empirical premise of the argument: whilst I think the general empirical assessment is broadly correct, i.e. it is true that people are more likely to compare themselves to those close to them and care about these comparisons in such a way that they are more likely to lose self-respect when they judge themselves inferior in these groups, what the argument would actually need to show in order to obviate the concern with cross-national equality is something stronger, to wit, it would need to show that no unjustified loss of self-respect presently occurs as a result of cross-border comparisons in which members of less well-off groups engage. And contrary to the plausible weaker empirical claim that the effects of cross-national comparison are *less* damaging than domestic ones, the claim that no such damaging effects occur is unsustainable in a world characterised by the immense amount of cross-border interaction, communication commerce etc.[15]

But in any event –and this is the second response- it is not entirely clear what the normative status of this argument is meant to be, for it addresses only one of the possible answers we might give to the question why domestic social equality is valuable: whilst the phenomenon of non-comparing groups may help to reduce damages to self-respect amongst the worst-off domestically and internationally, protecting self-respect of members of these groups is clearly not the only reason we have to care about social equality. Recall that the core intrinsic element of social equality is the idea that we can relate to others as equals, independent of class, gender, income and so forth. One important upshot of this ideal is that all persons –even those on top of the social

[15] Charles Beitz notes that "with the expansion and increased penetration of the global media, it cannot plausibly be held that global society is divided (...) into a plurality of non-comparing groups that are either unaware or indifferent to the standards of living found in other societies." (Beitz 2001: 114) Also see the fuller discussion of cross national reference groups in the next section.

hierarchy- suffer in some respect if a society is not one of social equals.[16] A society that can protect the self-respect of the worst off only by being strictly organised into non-comparing groups, even where such groups are entered voluntarily, seems to fall quite short of this fraternal aspect of the egalitarian social ideal.

So even if the non-comparing group argument were empirically accurate, it would be false to derive from this the claim that social equality has no force in contexts beyond the state. Perhaps its significance relative to other concerns is somewhat lessened because one reason that speaks in favour of social equality (the fact that it instrumentally guarantees self-respect amongst persons) can be realised in different ways beyond the state. But that point by itself does not show that we lack reason to attempt to realise social equality. Miller is aware that one might focus on the more intrinsic and fraternal reasons to value social equality, but his response to that concern, it seems to me, is not fully convincing.[17] It may well be correct that equal respect between political communities and the dramatic injustices that we currently see between states globally are much more pressing issues that must be addressed. But that is no reason to conclude that in those cases where a good deal of justice between states has been achieved and where persons from different states intensely interact in ways that are from their perspective permanent and unavoidable (i.e. in cases such as the EU), we have no reason to care about fraternal relations amongst persons who interact in these ways. Of course, there may again be constraints on feasibility here, but these would require a different argument.

6.4.2 Feasibility arguments

Even if, as I just suggested, the moral arguments of the restrictivist position may not be fully convincing, should doubts about the feasibility to realise social equality beyond the

[16] This point, namely that the better off are equally harmed in at least some respect in an unequal society is what might be called the 'egalitarian-fraternal' element of social equality. It is what Scanlon calls its "most egalitarian aspect" (Scanlon 2005: 15)

[17] He says: "Once again, my response to the argument is somewhat sceptical. What international cooperation requires is indeed not fraternity, but mutual respect between political communities who recognize their differences but also realize that they need to work together in a number of policy areas. And the precondition for this is not equality, but the absence of serious injustice." (Miller 2007: 78)

state not be wholly sufficient to dispel the idea of extending social equality beyond the state? Although I think that concerns about feasibility point to some important insights, I now want to suggest that no categorical distinction between domestic and transnational applications of the social egalitarian ideal is possible. In particular, and this is the key point of the following discussion, these feasibility constraints are much less acute in the EU case than they are globally.

6.4.2.1 Complex equality, esteem and partially overlapping spheres

The absence of widely publically shared hierarchies of esteem –and 'complex equality' which may help to bring it about- is the one issue that requires the most cultural and sociological commonalities amongst persons to be realistically feasible, for there need to be various social spheres of esteem in which people interact, and there needs to be some level of agreement concerning the importance of these spheres and when one sphere becomes pre-eminent or some people dominant across spheres. Whilst I think this is basically correct, I want to propose that much less is in fact required for a form of *relational equality* to become feasible amongst members of a social group. The relevant point is the following: whilst the existence of hierarchies of esteem poses a problem where people engage in comparison and competition across a range of social spheres, the *existence* of such spheres is not a pre-requisite for the value of relational equality to emerge as a possibility amongst persons. All that is required for this form of equality is that they enjoy equal basic standing and equal power over the fundamental political terms of their interaction.

Of course, this assumption is compatible with the idea that *where there are* pronounced interactions across different spheres (as there is within domestic society), it *would be* problematic if some people systematically outperformed all others in each sphere or if one of these spheres became a dominant marker of overall social standing. But if we think about examples where the social spheres in which individuals participate only partly overlap then that fact itself establishes something like a 'structural incommensurability'. Perhaps it is easiest to see why this is so by reference to a simplified example: Imagine a federal arrangement between two societies. In society A,

there are two social spheres with their own rankings, say sphere 1 and 2. The same is true for society B, where there are spheres 3 and 4. Now within each of these societies, complex equality will require that no group of persons outranks all other social groups in both these spheres and that none of these spheres is considered pre-eminent because only then will all members of A or B compared to the As and Bs be able to fall back on their common political status as equals in public interaction, provided that each person can secure a basic level of social respectability (see next section). But now think of the complete federal arrangement consisting of all As and Bs and what relational equality will require there: again, it will be necessary that (a) people have a common political status as equals, that (b) they all enjoy equal basic standing and that (c) no spheres of social achievement is pre-eminent or no group outranks all others across these spheres. But in the federal collective of people, condition (c) is inevitably satisfied because the spheres of As and Bs are in fact separate, and there is therefore incommensurability between all spheres (1-4) considered at the federal level. So plausibly, the relevant point about complex equality and equality of status beyond the state is this: the fact that people engage in spheres of esteem that only partially overlap and potentially rank people according to different criteria within these spheres seems actually to make the realisation of equal status easier, rather than more difficult, so long as they maintain equal basic standing and equal power over their political institutions.

Nothing that I have said yet indicates that this kind of incommensurability does obtain amongst EU citizens living in separate states. Perhaps one way to make good on this claim is to refer back to the second section of chapter four where equality of opportunity amongst EU citizens was discussed. As I said there, the integration of European societies over the past decades has made it the case that certain positions of authority and advantage are the subject of competition from persons residing in all EU member states. Direct actual competition for desirable jobs plausibly implies that people at least to some extent *share* relevant hierarchies of esteem transnationally: If being a rich businessman or a successful athlete did not command similar positive assessments across European societies, then why would individuals compete for these positions in the first place? But nonetheless, it seems undeniable that many spheres of esteem remain limited to evaluations between members of the same society - so the EU

is a social formation where variously overlapping sets of people compete in different spheres and assess their relevant position against persons who are sometimes only their co-nationals, sometimes belong to a wider group. So as far as the absence of hierarchies of esteem as a pre-requisite for relational equality in the sense of equal status is concerned, it seems that the EU case inherently provides the absence of this kind of hierarchy because spheres of assessment are only partially overlapping. Of course, this does not show that social equality amongst EU citizens is therefore realised, for there may still be hierarchies of power and basic social standing in place between them.

6.4.2.2 Stigma and Humiliation

One inegalitarian bad that social equality seeks to counteract is that of unequal basic standing, indicated by the fact that some people feel humiliated and stigmatized in the context of public interaction. An initially compelling thought is that the damaging effect of stigma and humiliation is a phenomenon that matters primarily amongst persons in their direct (interpersonal) relations and in face-to-face social contact with others. This would mean that threats of stigma and humiliation are always localized and require particular local institutional solutions. An additional problem with extending the argument against stigma and humiliation across societal contexts was, as we saw, that cultural differences may render the definition of when a set of material holdings is insufficient to guarantee basic social standing problematic when we look at groups that do not share a national culture. Are these arguments convincing? Let us consider them in turn, starting with the requirement of proximity and actual interaction.

The first point concerning the inapplicability of stigma and humiliation across borders focused on the fact that the relevant harm only occurs when there is close contact and a public sphere amongst persons. Yet contrary to this suggestion, I now want to render plausible the idea that there can be and undoubtedly are justified feelings of humiliation that one can experience whether or not there is direct interaction in a public sphere between the well-off and the poor. Consider the following science fiction example, popularized in the 2013 blockbuster film 'Elysium': in this dystopia, a minute fraction of humanity lives on a luxurious 'space habitat' circling Earth whilst the vast majority

lives on the planet in destitution, primarily occupied with producing goods for the Elysians to purchase for the satisfaction of their expensive habits. There is no direct or public interaction between the two parts of humanity because all trade relations are processed via robots conducted from Elysium. The essential point of this scenario is that people living on Earth clearly do feel a form of justified humiliation: many of them feel powerless and worthless simply knowing about the kind of life people on Elysium enjoy and the kind of power they can exercise over people on Earth. In a certain respect, the sense of worthlessness is in fact reinforced rather than weakened by the fact that the Elysians can simply choose not to personally interact with the unfortunate majority. Moving to a less fanciful example, consider those living in a slum or favela in a developing country whose neighbourhood is in proximity of a 'gated community' in which upper and middle class families live. Is it really plausible to think that simply because there is no direct contact between these individuals, there is no room for experiencing humiliation?

A more convincing account of justified feelings of humiliation, it seems to me, does not start from actual forms of physical interaction but from the mere fact of reciprocal knowledge about each other and prevalent judgements and standards of reference that exist within and across social groups. The person raised in a Columbian favela (or a Romanian or Bulgarian Roma living in a rural slum) is perfectly justified in feeling shame and stigma once she realises that a majority of people –wherever they may reside- live in properly-constructed buildings with running water and clean sanitation, have more than one set of clothes to wear etc. and it is the case that this majority believes that living in those conditions in which the poor person lives would give them reason to feel ashamed and humiliated. And clearly, those more constrained conditions are met beyond borders when there is intense global economic and social interaction. As Glyn Morgan observes:

> As globalization increases our access to ways of life outside our own borders, it is likely that people's reference group will extend to those outside their own borders. It is not implausible to imagine a world where the general idea emerges of a representative modern lifestyle

> – a lifestyle that includes a car, a well-equipped house, and a functioning public infrastructure. To the extent that people measure their sense of self-worth in terms of this modern lifestyle, those deprived of this lifestyle might well think of themselves as the world's inferiors.[18]

Now how about the point that cultural differences preclude cross-national assessments of the material requirement of basic social standing? Whilst I think that points about cultural difference have some force when we think about what it would mean to extend the ideal of social equality globally, it strikes me that there is much less controversy regarding the requirements of basic respectability in more limited transnational contexts. For example, it seems quite possible to conceive of a cross-nationally valid definition of the minimal material requirements to be able to participate in public life as a person with standing if we limit ourselves to Europe and North America. Thus, whilst cultural differences may speak against the possibility of finding a global standard of humiliation-freeness, it is not so clear that cultural difference can bear the heavy burden of showing that we can never determine requirements of basic standing across national audiences.

6.5 Respectability, poverty and cross-country referencing in the EU

Despite their general plausibility, counter-arguments against the restrictivist position just proposed in the global context largely rely on conjecture: Whether and to what degree such a global standard about what constitutes a decent lifestyle has evolved will be subject to considerable empirical and theoretical disagreement. Similarly, whether individuals globally have extended their reference groups for assessments of self-respect and deprivation is difficult to assess.[19] Fortunately, the focus on the EU simplifies the question and allows me to scrutinize in more detail the actual empirical evidence for the emergence of cross-nationally valid respectability standards and the extension of people's reference groups (as far as basic material conditions of respectability are

[18] (Morgan 2011: 156)

[19] I have been unable to find any empirical studies that attempt to analyse this particular question in any detail.

concerned) beyond the confines of their national community. In recent years, a number of sociologists and economists have turned to these questions in the context of EU-wide measurements of poverty and social exclusion.[20]

It is important to distinguish between two separate questions here: The first question concerns the actual content of each national standard of respectability, i.e. do people in each national context have roughly similar views about what level of material holdings is minimally required to be a member in good standing? If we can show this to be the case then at least the argument from cultural difference loses its plausibility as far as basic standing in the EU is concerned.[21] The second question concerns the reference group according to which individuals define these requirements, to wit, do people feel humiliated in part because they actually compare their own holdings to those of individuals living in other societies (other EU member states)? Both these questions have been subjected to empirical analysis in the EU case, though the response to the former is for obvious reasons based on more solid survey data.[22]

In the relevant empirical literature, the key concern is with the measurement of EU-wide poverty. It is therefore important to briefly describe the connection between the development of humiliation and stigma (and the lack of basic social standing) and the concept and measurement of poverty in this literature.[23] There are different concepts of poverty and different approaches to its measurement. Only some of these are directly relevant for the issue of basic social standing. One fundamental distinction between different concepts of poverty is that between ‘objective’ and ‘relative’ poverty.[24] Objective accounts of poverty stipulate a level of resource holdings or access to goods (whether privately held or publically available) below which a person suffers an absolute shortfall in terms of basic human needs. Poverty of this subsistence kind is not

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[20] For a summary of this literature, see e.g. (Goedemé & Rottiers 2011)

[21] Of course, it may still turn out that expectations and judgments about levels of resource holding that lead to *higher* status levels in social stratification differ above the basic minimum in accordance with cultural differences.

[22] See the discussion of the relevant data in (Dickes, Fusco, & Marlier 2010) and (Goedemé & Rottiers 2011)

[23] An illuminating discussion of the different ‘stakes’ of poverty that are morally relevant, see (Ci 2013). Classics in the field are (Sen 1983, 2006).

[24] See (Sen 1983)

obviously or straightforwardly related to a lack of basic standing or stigmatisation. For example, Ci mentions the case of Maoist China where subsistence poverty was actually considered a 'proletarian virtue' and would not reduce social status.[25]

Of course, subsistence poverty may be a strong indicator for the lack of social standing, but this will depend on further facts about the relevant society (e.g. in a society where everybody suffers from subsistence poverty, there is no lack of social standing for anybody). Since persons suffer humiliation and stigma when they are judged by others to fall short of some norm, it seems clear that certain accounts of 'relative' poverty are more relevant for social standing. One classic approach here is the formulation by Townsend, who suggests that "individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the type of diet, participate in the activities and have the living conditions and amenities which are customary, or at least widely encouraged, or approved, in the societies to which they belong."[26] Similar formulations have been adopted in many countries as the official definition of poverty, and indeed, the EU's definition of poor individuals is that of "persons whose resources (material, cultural, social) are so limited as to exclude them from the minimum acceptable way of life in the Member State to which they belong."[27]

Yet when it comes to measuring poverty of this kind, there are again a number of possible approaches. One approach is that the researcher determines a relatively defined level of resources (most often approximated by income) below which it is then assumed that a person will count as poor relative to the stipulated reference group. The measure of poverty most widely used in empirical research is in fact a version of this kind: persons are judged to fall below the poverty-line if their income is lower than a certain percentage (frequently 60%) of the median national equivalized household income. Some scholars have criticised this approach because the methodology itself includes a bias towards national comparisons – but whether the relevant reference group should be national or transnational essentially depends on what purpose we want

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[25] (Ci 2013: 126)
[26] (Townsend 1979: 31)
[27] (Council of the European Communities 1975)

to use the statistical indicator *for*: as several authors in the EU context point out, it would be obviously questionable if EU institutions applied national-reference group indicators of poverty when contemplating how to distribute structural adjustment funds or resources from the European social fund. For example, the poverty threshold in the UK is about 3.5x higher in terms of available income (purchasing power adjusted!) than the poverty threshold in Poland, and so being poor in many richer EU member states still corresponds to levels of income (again, purchasing-power adjusted) that would put one well above the social median in many of the poorer states. So for the particular task of distribution EU resources, national poverty measurement seems not particularly well suited.[28]

But the potential unfairness of such national-focused indicators is not the key concern here. A more important problem for the purpose of analysing social standing is the assumption that this level of income will track the amount of resources required to meet norms of respectability in the society where the person lives. Quite clearly, this assumption need not be true, for the resources to achieve a respectable status may be higher or lower than the arbitrarily set threshold of income, and income may not be the best measure to start with.[29] It seems then that a social indicator more relevant for the issue under consideration here is one where sociologists engage in 'dual' empirical studies, i.e. where they seek to determine not only how many people fall below some relatively defined level of income poverty (whether it is defined nationally or supra-nationally), but they also seek to establish through social surveys where people perceive this poverty level to be exactly. Evidently, what people in society take to be constitutive of poverty is going to be fundamental for the kind of stigma and humiliation that people may suffer.

[28] (Fahey 2007; Guio 2005a). Partly as a result of these kinds of criticisms, the EU has recently added further indicators to its statistical survey tools of EU citizens, which now includes the element of 'degree of social deprivation' from which a person suffers. This new indicator is measured in terms of access to crucial goods that all Europeans are assumed to consider essential for a decent lifestyle. (Atkinson & Marlier 2010)
[29] For a discussion of the various reasons why income is at most a useful proxy of the relevant kind of poverty, see (Grusky & Kanbur 2006).

6.5.1 Evidence of equal standards of respectability across the EU

A 2007 Eurobarometer research project and several research papers utilising this data have engaged in exactly such a kind of analysis.[30] So for example, Dickes et.al. in their study on the "Structure of National Perceptions of Social Needs Across EU Countries" assess which items are considered to be 'socially perceived necessities' in different social contexts.[31] The survey questions, posed to representative sampling groups in 27 EU member states were of the following kind: "What, in your view, is necessary for people to have what can be considered as an acceptable or decent standard of living in [your country]. For a person to have a decent standard of living in [your country], please tell me how necessary do you think it is to ..."[32] The 74 individual items that followed were separated into different 'blocks', covering financial situation, housing and local amenities, housing durables and communication devices, healthcare and other social services, nutrition and clothing, and social and leisure activities. A final block of items related specifically to the requirements of children. Respondents could specify whether they considered these items, "absolutely necessary, no one should have to do without", "necessary", "desirable but not necessary", and "not at all necessary".[33]

Two key findings of the Eurobarometer study and Dickes et.al.'s analysis are, first, that there is remarkable similarity between the content of basic requirements to count as respectable across EU member states and, second, that the more necessary a particular items is considered within a national context, the more consensus there is across all European member states. Thus, there is near consensus (a correlation of the means scores >0.8) across European states when it comes to the necessity of basic healthcare, rudimentary secure financial situation (ability to pay utility bills/rent/mortgage), housing durables (bed, refrigerator), basic clothing (warm coat), medical equipment, housing and living conditions (no leaking roof, no damp walls, indoor flushing toilet), and many

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[30] (European Commission 2007)

[31] (Dickes, et al. 2010: 145). The methodological approach to socially perceived needs they follow is that of (Mack & Lansley 1985). The relevant dataset is that of the 2007 'Poverty and Exclusion' Eurobarometer Survey. (European Commission 2007)

[32] (Dickes, et al. 2010: 147)

[33] (Dickes, et al. 2010: 147)

items relating to children.[34] Similarly, Europeans generally share judgement about the kinds of items that are, although certainly important for a 'good' overall lifestyle, not strictly speaking necessary for a minimally decent life. These include for example the "capacity to save money each month, the ability to buy smart clothes for job interviews or other formal occasions, enough space in housing, quality of neighbourhood (...), social and leisure activities including decorating home, holidays, and (tele)communication (car, mobile phone, internet connection)."[35]

One further noteworthy finding is this: whether or not a person in any EU country self-identifies as living in financially challenging circumstances is a stronger predictor of the set of items that she or he will identify as "absolutely necessary" than the EU member state in which she resides.[36] Thus, we should conclude that in respect of the first argument about cultural difference, standards of public respectability are roughly equivalent across most European states such that the question "Which kinds of material resources and capabilities are necessary to count as well-respected?" will receive identical or at least very similar responses in each member state.

6.5.2 Cross-national reference groups in the EU

But whilst these surveys show that cultural differences across EU member states are not very large, these kinds of findings do not show that people's self-respect depends on cross-national comparisons (the second question identified above). For such an assessment, different research is necessary. Fortunately, such analyses also exist in the EU context. Thus, Delhey and Kohler in their pioneering 2006 study seek to establish whether citizens from European states rely on cross-national reference groups in determining their degree of life satisfaction and feeling of relative deprivation. The conclusion that these authors draw is that "just as people are assumed to have multiple identities, so they also use multiple yardsticks, both national and international."[37] Although their study indicates that people predictably find it easier to compare their

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[34] (Dickes, et al. 2010: 148-149)
[35] (Dickes, et al. 2010: 149)
[36] (European Commission 2007)
[37] (Delhey & Kohler 2006: 137)

relative standing to neighbours, friends and co-nationals, roughly 90% of surveyed EU citizens are capable of forming cross-border assessments and they generally have a pretty accurate picture of actual differences between living standards prevailing in different European states (measured in terms of per capita GDP). More interesting for our purposes here, the authors conclude that "the lower individuals rate their own personal living conditions compared with those in the relevant reference country, the less content people are with their lives (...). Comparisons with rich countries have a greater influence than comparisons with poor countries. The more people feel personally deprived, relative to other countries, the less satisfied they are with their lives. In contrast, the feeling of relative gratification has a much smaller impact on life satisfaction, and often no impact at all."[38][39]

Of course, none of this suggests that co-national comparisons do not continue to constitute the core frame of reference for assessments of deprivation, poverty and so forth. But as the study suggests, such assessments increasingly seem to intermingle and combine with cross-national ones. Moreover, various authors suggest that two factors make it very likely that these cross-national reference group extensions are likely to grow stronger: First, the impact of cross-national comparisons on individual assessments has been shown to increase with the knowledge about living standards in other states, and knowledge of this kind of is much more likely to disperse as member state markets and mass media outlets are increasingly integrated in the EU. Second, the relative gap in living standards between states has been shown to increase the salience of cross-national reference groups. Since even the most recent studies do not yet include full statistical datasets for the newly acceded Central and Eastern European states (and do not yet include the growing gap between Southern and Northern member states' standards of living in the wake of the global financial crisis), it is to be expected that future studies will reveal an even stronger influence of cross-national comparison.

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[38] (Delhey & Kohler 2006: 137)

[39] Jonathan White has presented an interesting qualitative analysis on the degree to which Europeans engage in cross-national comparisons. He shows how "by generating diverse social encounters, new information resources, and an extension in the scope of legislation, [the EU] invites citizens to compare their daily experiences with those of people further afield and to evoke reference groups outside their country of residence." (White, J. 2012: 61)

To sum up: We can conclude that there is a fairly strong case for paying attention to cross-national material inequality if we aim to protect worse-off members in poorer EU member states from feelings of relative deprivation, stigma and loss of self-respect: the larger the cross-national poverty gap, and the more readily available information about the vast material differences are, the more negative the influence.

6.5.3 Equal Power and EU Institutions

The argument against the feasibility of equal power beyond the state was that it is not at all clear what kinds of decisions and rules should be subject to the requirement of equal power. I think this argument has considerable force as far as the global context is concerned. But does it have equal merit in its application to the more limited case of the EU? Contrary to the global case where it is hard to see what 'equal control' over the continuation and content of the social interaction would entail, the EU does have a clear legal framework that provides guidance as to the kinds of decisions that concern EU citizens as a group: not only do EU treaties specify which areas of political decision-making fall within the competency of supranational authority, but the European legal system also has norms governing which issues fall exclusively within the domain of member states as well as interpretative principles ("subsidiarity") and decision-making procedures to determine which decisions are properly part of EU authority in case of conflicts about competency between different levels of governance. So whilst the argument that the proper scope and boundaries of the political 'relationship' in which we stand to all other persons globally appears difficult to answer and there is no obvious strategy on how to deal with this problem, the EU as an institutionally embodied entity can plausibly determine which issues fall within the scope of the 'co-EU citizen relationships' in ways that are comparative to those in which contemporary nation states deal with such questions.

Furthermore, it seems that this point is strengthened by recent EU treaty developments and in particular the formation of a charter of EU 'citizenship' rights that concretize the set of equal rights that all EU citizens enjoy vis-à-vis EU institutions. The initial set of EU citizen rights developed from the economic rights of workers contained in the EEC

Treaty, most notably Art. 40 and Art. 51 (EEC). These economic rights did not extend to anything approximating a set of equal political rights for direct participation in the EU as a supranational political order. But spurned by important decision of the ECJ regarding the implication of such economic rights against non-discrimination in 'adjacent' policy areas (e.g. inclusion in the social security schemes of foreign member states and the right to bring family members when working in other member states), there gradually developed a core set of equal rights that all persons in the EU enjoyed qua being citizens of one of the EU's member states. The Maastricht treaty generalized these predominantely economic rights but also extended them into more 'political' and 'participatory' aspects of basic rights. Thus, part II of the Maastricht treaty consisting of Articles 17-22 introduced the idea of *European citizenship*. More recently, the Charter of Fundamental Rights of the European Union –part of the Lisbon treaty- has further enhanced the level of political and procedural 'citizen rights' of all EU nationals. Although the EU citizenship provisions only have direct effect on the decisions of EU institutions and member states in relation to the implementation of EU legislation, the EU citizenship rights sometimes have quite far-reaching implications. For example, the EU Commission has recently issued guidelines for member states to address issues of domestic democratic participation for nationals living abroad on the basis that excluding citizens who live in another member state from national elections impinges on the substance of the *EU citizen right* to free movement. It seems then that in the EU case, contrary to the global one, there is a fairly concrete and institutionalized conception of the kinds of issues that concern EU citizens as a collective; and there is a set of basic political rights that grants a form of equal power over the institutions of the EU to each.

Summarizing the various points of section 6.5 then, my suggestion here has been that social and institutional features of the EU make it the case that on the one hand, some of the reasons to favour social equality that do not apply in the global case do seem to have force when transferred to the EU case, and, on the other hand, some of the feasibility problems that restrictivist critics have pointed out in relation to the global case can be set aside when we think about relational equality in the EU. Thus, I conclude that at least some core elements of social equality as I have defended in chapter two apply to the EU and make 'EU social equality' a valuable and feasible ideal.

6.6 Conclusion

The aim of this chapter was to convince readers that indirect transnational arguments for economic justice at the EU level are plausible. I suggested that once we disaggregate the ideal of social equality and focus on different inegalitarian bads that the ideal seeks to avoid, we can see that at least a significant number of these inegalitarian bads may arise amongst EU citizens considered as the relevant social group. To point out the plausibility of these claims, I compared and contrasted the relationship in which EU citizens stand to one another with the conditions that characterise the relations amongst individual persons on a global scale more generally, and I demonstrated that at least some of the problems that the realisation of the ideal of social equality on a global scale would entail do not arise in this more limited context: there is less cultural diversity amongst Europeans, and their heavy interaction has to some extent led to cross-national comparisons in which persons engage when reflecting on their basic social status and level of deprivation.

Moreover, EU citizens already have in place a set of political institutions and quasi-constitutional principles that offer them a fundamental public status as participants with equal political and procedural rights in the decisions of EU institutions. These institutions and principles may be less extensive than equal citizenship in democratic states, but they do act as a public form of recognition that EU citizens are in some fundamental way equal participants with equally valid claims to decision-making power and social standing in the EU. No institutionally guaranteed transnational set of political and procedural rights exists globally, and hence realising anything approximating the ideal of social equality on that level will face more severe difficulties.

Chapter 7

Protecting the Welfare State: An internationalist case for EU justice

7.1 Introduction

Imagine you are the leader of one of the social democratic parties that came to power across many states in Western Europe in the 1960s. Your political convictions are roughly these: As a democrat, you believe in democratic self-rule which for you means that the people controls public policy, debates issues publically, and deliberates about the common good. As a representative of the moderate socialist tradition, you believe that government should bring about a more egalitarian society and you think this requires shaping and controlling the economy to reduce unemployment and ensure 'good' jobs that allow a decent life for all. At the least, the state should guarantee a basic minimum, and it should also engage in public projects such as social housing, free or at least affordable public transportation, public recreational facilities, and so forth. You are convinced that in order to guarantee equal opportunities, access to public education should be free and broadened to guarantee secondary and university level education to children from working class parents (your constituency!). Those living together in a state should feel a sense of solidarity towards one another; they should relate to each other as equals without massive differences in economic means and opportunities forcing them to lead radically disconnected lives.

Finally, you take it for granted that the state may justifiably take such steps as are necessary to realise this ideal, which may include heavily progressive taxation of incomes and wealth, as well as a strong protection of labour rights. Managing the economy in this way includes a right, in fact a duty, on the government's part to set taxes as high as necessary and to control the in- and outflow of capital from your state's economy. You hope there is a reasonable prospect of achieving your ideal of a more just society. Globalisation is not yet a word in the dictionary. There is something called the EEC, but its major role is that of a monopolistic administration of coal and steel across European economies. The international economic architecture is called 'Bretton

Woods' and its core aspects are stringent capital controls between national economies, a global reserve currency guaranteed by a gold standard, and fixed exchange rates.

Now imagine you, the social democrat, wake up in your country today. You learn that there is a phenomenon called globalisation, which primarily consists of a massive expansion in transnational trade, production and communication. You are shocked to hear that in the most globalised domain of all, the financial market, $9 trillion worth of currency circle the globe on a daily basis and that fixed exchange rates, gold standard and capital controls have been abandoned. You see that many of the provisions of public goods for which you fought have been reduced and/or privatised. Although living conditions have improved overall, you realise that economic inequality in your society has not receded but increased substantially. Many people work in jobs that you feel do not provide for a decent life. Then you hear about an institution called the European Union, which has taken on an important number of those aspects of 'economic planning' -a term that is no longer used- that you felt constituted core responsibilities of national government, but interprets these in a quite laissez-faire manner. There is now a European competition agency to break up monopolies, and there is freedom of movement for all persons across most European states. You are surprised to learn that there is even a European currency and a European central bank that sets interest rates across (a large group of) member states and regulates major banks.

The question that I address in this chapter is this: Faced with the condition of domestic and international politics as they are today in Europe and globally, what should the political leader awoken from this (admittedly) social-democratic utopia propose that we do? What I will argue is that he will come to take the following position: Given the things that he wants to see realised in his *own society*, because of the social democratic values that he cherishes *there*, he should opt to transfer some of the powers he previously thought national government should have to a European authority and insist that they be used consistently with his social democratic aims at this supranational level. The social democrat's institutional recommendation does not stem from any change in his values: he still believes in the ideal of a solidaristic political community and has not turned into a cosmopolitan who thinks that we owe *as such* equal concern and

substantive justice to every person globally, nor even every European. But he has assessed the contemporary economic situation in terms of those things that we realistically can change and those that we cannot (he is a politician after all!), and he has become convinced that domestic social justice requires a robust social democratic institutional design at the European level. This is the view that this chapter seeks to motivate. Since the normative premises from which this institutional design is derived can be shared even by those un-moved by any *moral* arguments that social justice must extend beyond state borders, i.e. by the transnational arguments developed in chapters four to six, I refer to the kinds of justification for arguments presented here as the *internationalist* case for principles of social justice at the EU level.

The strategy pursued here is the following: First, it is shown that the current economic and political realities create conditions that threaten the existence of cherished internationalist values domestically. Second, it is argued that there are strong reasons that speak against returning to the 'social democratic utopia' with which we began this chapter. These reasons can either be empirical, i.e. it is extremely implausible that we *could* return to a situation where the relevant value can be protected in a national context, or normatively motivated, i.e. there are strong moral reasons that speak against returning to the pre-EU constellation. Importantly though, these second, moral arguments must also be based on premises that our social democrat will accept – they cannot be reasons of cosmopolitan morality.

The chapter has seven sections. The next section explains in more detail the normative basis of the internationalist case for EU justice by providing a fuller account of the premises that inform the social democratic internationalist position –or as I will call it for short "solidarist" internationalism, namely a distinctive conception of social justice, self-determination, and sovereign equality. The following section (section 3) describes a trilemma for the solidarist internationalist position: domestic social justice has come under threat as a result of transnational and global interdependence in such a way that we cannot uphold all three of sovereign equality, domestic social justice, and the extensive rights of non-interference in terms of which self-determination has traditionally been understood. I then suggest how re-locating political authority to a

European level could counteract this development and safeguard domestic social justice with relatively little costs to the value of self-determination, properly conceived as *collective autonomy*. The next two sections substantiate the empirical premises of the previous section by describing in some detail two phenomena, namely tax competition (section 4) and regressive labour regulation (section 5), each of which threaten domestic social justice and social equality within each EU member states. The final section (section 6) turns to two objections that may be offered against the internationalist case for substantive justice at the EU level. Section 7 concludes.

7.2 The content of solidarist internationalism

Fundamentally, solidarist internationalism[1] relies on three core values. First, the position holds political communities are valuable if and insofar as they realise social justice amongst their individual members. Second, the position holds that political communities should be able to exercise self-determination, by which I mean for the moment the thought that it is valuable if political communities are in a position to work out certain aspects of their collective political life without interference. The third value is that of sovereign equality, i.e. the idea that political communities all have an equally important interest in achieving social justice and self-determination. If adherence to these three values constitutes solidarist internationalism, then what would an ideal global political order on this account look like? The answer, provided by soldarist internationalists like David Miller, John Rawls, Michael Walzer and Philip Pettit, is that we should think of the most desirable global order as a 'society of states' in which all political communities domestically realise the values of self-determination and social justice and respect certain constraints of fairness in their interaction.[2]

In the normative EU literature, two versions of solidarist internationalism can be discerned. The first version is Richard Bellamy's account of 'republican

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[1] Various names have been used to delineate similar positions. Charles Beitz called this view the "society of states" view in part two of his classic treatment of justice in international relations. (Beitz 1979 [1999]). The term solidarist has also been used extensively by scholars –especially in the 'English School'- in the field of International Relations. In this literature, it is contrasted to 'statism' and 'pluralism' at the international level. The implied meaning here is different from that of IR scholars. See: (Hurrell 2002)

[2] (Miller 2000, 2007; Pettit 2006, 2010; Rawls 1999b; Walzer 1980)

intergovernmentalism': the EU is as an association of free peoples, to wit, political communities that have realised the conditions of self-government.[3] The value underpinning intergovernmentalism is the one of republican freedom as non-domination for which national self-determination is a necessary instrumental enabling condition. Thus, the task of republican intergovernmentalist theorizing is to devise principles which are capable of "ensuring the interactions between representative states are mutually advantageous while protecting their equal rights to collective self-determination."[4] Liberal versions of solidarist internationalism in the EU context have been proposed by Francis Cheneval, Andreas Follesdal and Kalypso Nicolaïdis, who each seek to work out principles for the fair interaction of self-determining peoples in a broadly Rawlsian framework.[5] What makes these theorists internationalist is the fact that they each assign some fundamental value to the self-determination of peoples and attempt to work out principles for conceiving of the rights and duties of state agents under conditions of increasing interdependence and political integration. The fundamental unit of theorizing justice beyond the confines of the state is each individual political community, rather than each individual person one by one, and that this move is justified at a moral level by reference to the free standing value of communal self-determination. Thus, all solidarist internationalists think of the best possible theory of international justice as one that grants each state exactly those equal rights, powers and immunities against other states that enable it to realise self-determination and social justice, whilst fairly interacting with others. This system of rights is what we might call an *optimal sovereignty regime*.

7.2.1. Social Justice

As far as domestic social justice is concerned here, I will take it as a given that the kind envisaged is of the broadly liberal egalitarian kind. Even if the authors mentioned in the previous paragraph make somewhat different proposals about the content of domestic

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[3] (Bellamy 2013: 6) The relevant conditions that Bellamy takes here are adopted from (Pettit 1997).

[4] (Bellamy 2013: 15)

[5] (Cheneval 2011; Follesdal 2006a; Nicolaïdis 2012, 2013). Cheneval's and Nicolaïdis's discussions are more concerned with principles of democratic legitimacy: Cheneval develops a conception of 'multilateral democracy', and Nicolaïdis describes the optimal institutional arrangement for the EU as one of 'demoicracy'.

social justice, they all propose a version that includes a substantive element of economic equality: Rawls well-known position of course contains the idea that free and equal citizens will offer one another fair terms of cooperation, which will include equal basic liberties in their political institutions as well as fair equality of opportunity and the difference principle in economic life.[6] Miller and Walzer both defend the value of social equality as well as equality in different spheres of social activity.[7] For Pettit, social justice domestically, conceived as republican freedom from non-domination, is only realised when citizens enjoy extensive equal basic rights that are protected by the state, which include for example the protection against private domination by others, possibly in the form of a fairly high unconditional basic income.[8]

Immediately, some readers might interject that whilst these authors all offer conceptions of domestic justice that belong to a liberal egalitarian family of views (broadly conceived), at least some of them[9] also maintain that once we move to the domain of global politics, we must make room for other conceptions of domestic justice. Perhaps most famously, Rawls insisted that even as a matter of ideal theory, there may be non-liberal political communities with conceptions of domestic social justice that differ dramatically from the broader family of views just mentioned, and this needs to be reflected in our theories of international justice.[10] This reaction offers me the opportunity to clarify the scope of this chapter. The task I am pursuing is in two respects a narrow one: First, the aim is to investigate how a subset of well-ordered peoples (in Rawls's sense), namely political communities with a liberal public conception of social justice, should design their interaction with one another. Since all member states of the EU are of this liberal kind, the restriction seems unproblematic.

The second element of moderation of the argument derives from the first: The point here is not to work out a system of rules that can legitimately be enforced against each individual political community. The non-ideal conditions of the real world often

[6] (Rawls 1999c)
[7] See e.g. (Walzer 1983), (Miller 1999)
[8] (Pettit 2012b: 90)
[9] Notably, Rawls, Miller and Walzer.
[10] (Rawls 1999b part II)

provide ample justification for not implementing a particular moral principle one-for-one as a legal rule because it may be subject to abuse by agents unmoved by moral considerations. Of the various reasons that speak in favour of upholding a strong norm of non-interference in international law, this argument strikes me as one of the most persuasive ones. More narrowly, the task here is to settle the question by what reasons political communities should under ideal conditions be guided once they find themselves in the particular kind of complex interdependence that we see amongst EU member states, that is, what they should do *together* provided that each political community respects these ideal normative principles.

Now if the realisation of the same, determinate conception of domestic social justice were the only relevant element in the solidarist internationalist view, then designing the rules of a society of states (the "optimal sovereignty regime") amongst them would be relatively straightforward: each state would need to have exactly those capacities (protected by rights against other states) that are necessary to realise this particular conception in each state. Since all that matters is the realisation of this conception in each state, i.e. since it does not ultimately matter who exercises power to bring about the conditions that ensure its materialisation, they would presumably agree to shift political power to a supranational level that can help to realise justice by coordinating their interaction where the intense character of their interaction would make it impossible to realise the relevant principle in one state. But solidarist internationalists also cherish the value of self-determination, which significantly complicates the picture.

7.2.2. Self-Determination

The general idea of self-determination is that there is value in a political community being able to work out its domestic political arrangement in-line with the communal values and conceptions of justice. This general value is then taken to establish a liberty right of self-government and a duty of non-interference that others owe that community. Thus, the prevailing understanding of self-determination focuses on the notion of a political community's right to independence from external interferences. Understood in this light, self-determination is often believed to be the value that justifies the state's right

to negative sovereignty where the state is the rightful representative of a political community.[11] As Jeremy Waldron observes, "the principle of self-determination seems to be a fixed point in our political thinking. Who would deny that the people of a country have a right to determine their own destiny and govern themselves without interference from the outside?"[12] Of course, defenders of self-determination in terms of a stringent right to non-interference do not insist that this right should be absolute: they agree that in cases where widespread violations of basic human rights occur, the right to non-interference ceases to hold because there is no possible way of seeing such violations as an expression of the political community's attempt of working out political arrangements in accordance with their own (reasonable) values and ideals of justice. But all solidarist internationalists agree that above a certain threshold, the ideal of self-determination imposes stringent duties of non-interference on all other political communities.[13]

Yet even if most people in general share the sentiment that self-determination is valuable, there may be disagreement about what exactly the content of self-determination should be, and consequently, what the exact shape of the non-interference right of others is supposed to amount to: How far-reaching need the right of non-interference be? Any account of these rights must offer some sketch of what I will call here *domain* and *degree* of self-determination. By the former, I mean the range of issues about which a political community should be protected against interference. By the notion of degree, I mean the definition of what constitutes impermissible interference, and, correspondingly, the level of independence from other (state) agents that a political community should have in deciding on specific domains that fall under the heading of self-determination. For example, we might conclude that even though political communities should have a major influence over policies concerning access to their territory, other communities should also have some (smaller or larger) degree of input into what decision is reached in that domain. I take it that this thought is familiar

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[11] I do not here engage with the question who the bearers of the right are. I take it as a given for the purpose of this chapter that each state already rightfully represents a political community or "people".
[12] (Waldron 2009b). Of course, Waldron goes on to explain that the principle becomes controversial once we try to determine who should count as a "people". (see previous footnote).
[13] See e.g. (Walzer 1980), (Rawls 1999b), (Miller 2000)

from thinking about individual freedom in domestic settings: whereas persons should have a protected sphere of *exclusive* decision-making in regard of certain issues that bear on their interests (e.g. choices about conscientious convictions, personal relationships, and occupation), other kinds of choices that bear on a person's interest need to grant other persons some co-decision-making rights. So the *domain* determines the issue area for which self-determination needs to be in place, whilst the *degree* determines what counts as interference in each of these domains.[14] Even without presenting a full account of the domain and degree of self-determination (different authors may vary on this), at least one aspect that seems clear is that in the light of their commitment to social justice, solidarist internationalists will want to insist that self-determination must extend to at least a fairly broad range of issues concerning the conception of social justice that is implemented domestically.[15]

7.2.3 Sovereign Equality

The third element of the solidarist view is sovereign equality. The thought here is the following: just as any domestic political arrangement is only tolerable if it grants each citizen equal basic rights, any regime of sovereignty governing the interaction amongst states (who rightfully present political communities) can only be acceptable if it grants equal rights to each. So even though we may easily think about a society of states that grants some members stronger juridicial protection of their exercise of self-government (or less stringent duties of non-interference in the affairs of others) than others, such a system is rejected *ab initio* because it would amount to a denial of the idea that each political community is equally valuable and has an equally important interest in realising self-government and social justice. In this spirit, Rawls, in justifying his principles of the law of peoples, postulates that "much as in examining the distributive principles in justice as fairness, we begin with the baseline of equality (...), in this case the equality of and the equal rights of all peoples."[16]

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[14] A similar distinction is introduced in (Buchanan 2004: 333).

[15] For an overview of the large literature in International Relations that deals with the issue of humanitarian intervention, see: (Wheeler 2000)

[16] (Rawls 1999b: 41)

So clearly, the optimal sovereignty regime needs to be one in which each state enjoys the same *de jure* rights, powers, and so forth over the same domains and with equal degree– this much is given by the basic commitment to the equality of political communities. But the rights and powers that constitute a state's sovereignty must go at least to some extent beyond mere formal (or *de jure*) equality: First of all, it should not be the case that once some political communities have realised a choice that is protected by a sovereign right to non-interference, other political communities are no longer in a position to make choices that are protected by their identical sovereign right. In this sense, equal sovereign rights need to be compossible. Second of all, sovereign equality entails at least some substantive measure of 'fair value' of the formal rights that it grants to each state. Rawls famously included in his first principle of domestic justice the condition that at least some of the equal basic liberties that each citizen needs to have (namely basic political liberties) should have a 'fair value', i.e. having the right should be of equal worth for each person, which means that exercising the freedom protected by the right is roughly equally accessible. As far as political communities are concerned, sovereign equality requires that each state has roughly equal ability to take advantage of the rights granted to it under the best possible sovereignty regime.[17] These requirements will almost inevitably put certain constraints on the domain and degree of self-determination that can be given to each political community.[18]

7.3 A trilemma for solidarist internationalism

Having described the three elements of the solidarist internationalist outlook, I now want to point out a trilemma that this position faces once a certain kind of interdependence, which I will call *complex* interdependence[19], characterises their interaction: Under complex interdependence, at most two of the three elements of non-interference, capacity to realise social justice, and sovereign equality can be fully

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[17] Different solidarists will disagree about the precise meaning of 'roughly equal' here: For example, even those assuming that each state should have equal formal rights to non-interference may consider that it is justified if e.g. larger states find it easier to implement their domestic conception compared to smaller states.
[18] (Endicott 2010: 254)
[19] The notion of complex interdependence was first introduced in the IR literature by (Keohane & Nye 1977). My usage here differs slightly from theirs.

realised. The specific meaning that I want to assign to the notion of complex interdependence is the following: Two states stand in a relationship of complex interdependence if (and only if) justified decisions of one state in one of its domains of exclusive self-determination effectively constrain the other state's similarly justified decisions in one of its core domains of self-determination. Complex interdependence differs from the kind of interdependence that arises out of relatively modest economic and social interaction because, in complex interdependence relations, the externalities of state policy extend to the *basic elements of self-government* of others, namely the capacity to realise domestic choices about core elements of social justice. We can easily think of forms of interdependence where this is not the case: State A's decision to develop its coastal beaches for the benefit of its citizens may invite foreign tourism from country B as a result of which country C may suffer from the absence of revenues from B's tourists in its mountainous national park. So long as the loss of revenues does not affect C's ability to exercise its core choices in the domain of social justice, interdependence of this kind seems unproblematic.

7.3.1 The trilemma

How does complex interdependence create a trilemma for solidarist internationalism? Suppose we set up a sovereignty regime that provides each state with equal extensive rights of non-interference, thereby upholding sovereign equality and self-determination. Now consider the following example: In a world of practically inevitable and irreversible capital mobility, one state, Luxemstein, decides that organizing its system of taxation in-line with the community's truest conception of social justice requires a level of capital and income taxation that is roughly 1/5 of the level that prevails in all its surrounding states. Perhaps they are all sufficiently wealthy because of a particularly resource-rich natural environment so that the vast majority believes that paying less taxes would be better for her rather than everyone paying more. Let us stipulate that the system of taxation Luxemsteiners have set in place still falls within the range of broadly egalitarian conceptions of justice we have defined (even if it is perhaps at the very high end of the kinds of economic inequalities that are permissible under such a conception). Moreover, let us stipulate that the Luxemsteiners' choice is a genuine one, i.e. is not

merely undertaken with the strategic aim of attracting the wealthy inhabitants of other states to move to Luxemstein or at least to deposit large quantities of their savings there.

But suppose that this is exactly what happens as an unintended consequence: stemming from Luxemstein's specific exercise of its right to self-government, other states now face the stark choice between either reducing their own tax rate on those taxable elements that would otherwise relocate, thereby compromising on their ideal of what a fair system of burden sharing in the financing of the state (and a fair distribution of income and wealth more generally) would look like, or they uphold a system of taxation in-line with their ideal conception, but suffer from a substantial erosion of its tax revenues because of relocations. In either of these cases, neighboring states have to forego revenues that would be used to realize social goals in line with the state's conception of justice. So the obvious problem that arises in this example is that upholding sovereign equality and a right to non-interference for the Luxemsteiners will almost inevitably compromise the capacity to realise a more egalitarian version of social justice in each neighbouring state. Moreover, the strategic nature of the problem will quite plausibly lead to a downward spiral in which each political community ends up with domestic institutions that tax mobile factors less than would be desirable according to the political community's non-strategically adjusted preferences.[20]

What capacities to realise economic and social policy need to be in place to specifically guarantee the realisation of social justice within a state in accordance with its citizens' conception of social justice? Any plausible account here will be enormously complex. At the very least, however, realising social justice will include the provision of essential public goods[21] and the ability to implement a fairly egalitarian distribution of the benefits and burdens from social cooperation. Moreover, it will also include the existence and reproduction of an adequate mechanism for working out the specific conception of social justice under conditions of disagreement amongst citizens: realising a

[20] See the more detailed discussion in section 7.4.3.

[21] Of these, the most important one is the state itself with its legal and regulatory infrastructure that makes it possible in the first place to hold resources securely in the form of property. (See chapter 5, section 5 for more details on the issue of property).

community's conception of social justice in general requires the ability to work out democratically what ideal of the common good is to be realised. Ensuring that the global political order endows each state agent with equal capacity of administering social justice domestically does not, at least not under conditions of complex interdependence, merely depend on the set of negative rights that protect the state from direct and intentional interference by other state agents. As the example of Luxemstein showed, one reason for this is that choices by other states which cannot easily be construed as deliberate interferences (which would be prohibited by the negative right of non-interference) may constrain a state's actual capacity to realise a domestic conception of social justice. Another reason is that whilst a sovereignty regime governs the rights and duties between state agents, the capacity to realise social justice can diminish as a result of actions undertaken by non-state agents, or as a result of social, economic and technological developments that are difficult to capture in terms of actions undertaken by some specific agent at all.[22]

Suppose that even under complex interdependence, sovereign equality is not to be compromised. In the light of this commitment, we can think of two alternatives to avoid the capacity for social-justice restricting scenario described in the example. One alternative would be to tighten the notion of non-interference. So far, we have implicitly operated with what may be called a *narrow* conception of non-interference. On this understanding of interference, a state's actions only count as an instance of interference in another state's affairs when that state deliberately acts in order to change another state's behaviour or ability to act. By contrast, a *broad* reading of interference might be defined in such a way that interference can also occur when a state creates conditions that make it difficult for another state to implement certain types of choices in certain domains, whether or not the freedom-restricting action was deliberately undertaken in order to reshape the conditions under which the other state could act. So even though both understandings of interference will maintain that paradigmatic instances (e.g. military intervention, sanctions and embargos etc.) constitute impermissible

[22] Both these factors figured in the example just given: the problem would not arise if technological change had not made capital mobility practically irreversible; and this technological change would undermine the state's capacity for social justice if private actors did not decide to act on these incentives.

interference, they will come to different assessments concerning various kinds of 'externalities' that states can impose on each other's scope of action.

So in order to address the specific conditions of complex interdependence, one suggestion could be that we need to move to a broader understanding of what constitutes an impermissible interference. If the sovereignty regime precludes states from making choices that restrict other states' liberty to implement a reasonable conception of social justice, should we not simply adopt a wider understanding of interference and thereby take care of the complicating fact of complex interdependence? The problem with this idea is that such a broadening of the non-interference duties would also immediately restrict each state from implementing a number of important choices about social justice.

The second alternative would be to protect each state's capacity to realise social justice by giving up on the strict right to non-interference in specific domains of state policy and to transfer this right to a supranational authority. In such a system, states would need to give up their independence (i.e. their immunity from deliberate interferences by other states) and subject themselves to an authority that coordinates some of their choices in order to safeguard each state's general capacity to realise social justice. But of course, on the conception of self-determination understood as a non-interference with which we began, this alternative simply amounts to a different way of compromising the value of self-determination. In sum then, the solidarist internationalist seems to face a stark choice between either choosing a sovereignty regime of rights and duties that will foreseeably reduce each state's capacity to realise its domestic conception of social justice because different conceptions are not compossible (and the more egalitarian conception favoured by solidarist internationalists is especially vulnerable under complex interdependence!), or it will need to constrain the right of non-interference that protects each political community against being governed by outside forces. (I ignore here the third way of resolving the trilemma, namely that one could opt for a differentiated sovereignty regime that permits some political communities to enjoy non-interference and capacity to realise social justice at the expense of other political communities).

7.3.2 Self-determination as collective autonomy

I now want to propose that the best way of resolving the trilemma is by re- conceiving of the ideal of self-determination in a different way, namely in terms of the idea of collective autonomy. Reinterpreting self-determination as collective autonomy can help to lessen the force of the trilemma because it is perfectly consistent with the idea of collective autonomy to give up some independence –through a transfer of power to a supranational level- in order to increase the range of important options that one has available. Therefore, relocating state power to a transnational authority that exercises it (and grants each participating state co-decision power) is consistent with self-determination understood as collective autonomy. Moreover, transferring these powers is quite possibly the only viable strategy to realise substantive social justice in each state. Finally, transferring powers does not endanger sovereign equality.

David Miller, who formulates his version of self-determination in terms of collective autonomy suggests that self-determination for political communities is valuable "in much the same way as self-determination for individuals. Just as individual people want to be able to shape their circumstances to suit their aims and ambitions, so groups want to be able to decide how to organize their internal affairs and to dispose of their resources."[23] What precisely are the requirements of collective autonomy? As Miller's quote suggests, one way to approach the question is to look at the value of autonomy for individuals and its constituting elements, and then to suitably adopt this ideal to the difference between an individual and a collective. This approach, widespread in the literature, is what is often run under the label of the 'domestic analogy'. Following Joseph Raz's account of autonomy, individuals are autonomous when they are the "author of their own lives", who "control, to some degree, their own destiny, fashioning it through successive decisions throughout their lives."[24] The kind of self-authorship that Raz envisages is possible only where three conditions are present: First, an individual must have "appropriate mental abilities" to rationally reflect on her own conception of

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[23] (Miller 2000: 164)
[24] (Raz 1986: 378)

the good.[25] Second, an individual requires an "adequate range of options" from which to select.[26] Third, an individual needs to be independent, viz. she "must be free from coercion and manipulation by others."[27]

Of course, much more would need to be said here to fully account for the value of self-determination in terms of collective autonomy. The basic point here is simply that from the perspective of a political community, it does not merely matter whether or not it is in a position to decide certain issues without interference from others, but it obviously matters as well what actual options it has available and whether these options constitute an adequate range to work out and express the political community's aspiration to self-authorship.[28] So first, collective autonomy depends on the degree of independence that a political community can enjoy, that is, on whether or not there are in place ordinarily effective rights against the intentional interference (via manipulation or threat) by other states. This requirement of autonomy stands behind the reigning regime of strict non-interference rights for state agents. Second, however, collective autonomy depends on the range of actual options that a political community has available, and this element of autonomy in fact conflicts with a strong rule of non-interference under conditions of complex interdependence. So independently working out communal affairs can only contribute to collective autonomy if the options to choose from are sufficiently diverse to render the idea of authorship meaningful. As Raz observes, "a choice between hundreds of identical and identically situated houses is no choice, compared with a choice between a town flat and a suburban house."[29] In the context of self-determining political communities seeking to implement a conception of social justice, the analogy to Raz's meaningless choice between identical houses is the choice between hundreds of democratically enacted domestic institutional designs about economic justice that are,

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[25] (Raz 1986: 372)

[26] (Raz 1986: 372)

[27] (Raz 1986: 373)

[28] Miriam Ronzoni has recently made a similar argument in respect of how we should (re)conceptualise sovereignty. Although the point is substantively similar, I prefer to use the language of autonomy rather than the (republicanism-inspired) conception of 'positive freedom' (Ronzoni 2012). Also see Dietsch's and Wollner's discussions of self-determination in the domain of taxation and finance (Dietsch 2011a) (Wollner 2013).

[29] (Raz 1986: 375)

once implemented, rendered ineffective by competitive forces between states which political communities individually cannot control.

Let me briefly recap the last sections: First, I argued that solidarist internationalists are equally concerned with the realisation of three values, namely domestic social justice of a liberal-egalitarian kind, self-determination, and sovereign equality. I then suggested that under conditions of complex interdependence, not all of these values can be equally well realised in a regime of sovereignty that allocates (equal) rights/duties, powers/immunities to each political community. The solution that I proposed was that between these three values, we should give up a strong reading of the concept of non-interference and focus on the substance of self-determination. Properly conceived as collective *autonomy*, which is partly constituted by the positive capacity to realise certain important choices of the political community, self-determination is in fact compatible with subjecting important government choices to authoritative co-decision procedures in democratic supranational authorities, where these can help states to collectively realise certain justice-relevant choices that would be unavailable in their absence. The argument is internationalist because it grants that the exercise of self-determination, understood as collective autonomy, is of some intrinsic worth.[30] But it denies that a

[30] It is important to point out though that solidarist internationalists believe in normative individualism – they hold self-determining political communities to be valuable *because* their existence is vital for realising interests of individual members, most notably interests in individual autonomy. So thinking about self-determination for political communities in terms of collective autonomy must in some way show that collective autonomy contributes to the individual wellbeing of the community's members. (Wall 2007: 235). Two plausible strategies here are the following: First, one may argue that democratically governed political communities on average reduce the threats to independence that each person faces. Perhaps the thought here is that laws which are decided democratically by the political community will be more in line with the preferences of those subject to these laws, thereby reducing the threat to independence of each subject. But this argument is not very persuasive. First of all, even under conditions of democratic self-rule, the laws of a state are coercively imposed on all subjects irrespective of whether or not they can suitably be interpreted as an expression of each individual's exercise of self-authorship, for example because the person has voted in favour of those laws. So at least from the perspective of an individual who voted against these coercively imposed laws, individual independence seems no more or less compromised when she is subjected to laws that are created by some domestic democratic decision-making process as when some foreign agent introduces and enacts such laws. More generally, it is not even clear that self-government protects the individual person's independence amongst those who voted in favour of coercively imposed laws. Independence is limited when another agent intentionally reshapes our options either through manipulation or threat. And independence thus understood is compromised by coercive laws independent of whether or not I happen not to desire pursuing those choices that the independence-limiting agent imposes on me. Thus, the more likely route to showing that self-determination enhances individual autonomy runs via the kinds of autonomy-relevant options that self-determination offers members of the political community: it allows them to have and render meaningful certain kinds of options that are important for living an autonomous life. The idea is that some vital elements in the set of adequate options that individuals need to have in order to be autonomous are best protected when

government insisting on a stringent right of non-interference is in fact always adequately promoting the political community's interest in collective autonomy and domestic social justice. Autonomy is as much about the options available to us as it is about our independence in exercising these options.

7.4 The reality of complex interdependence (I): Tax competition

The purpose of this section is to demonstrate that complex interdependence that forces trade-offs between the three values is not merely a theoretical possibility, but is in fact an accurate description of the world we live in: European states today extensively and unavoidably interfere in one another's core domains of collective autonomy. Here, I focus on two examples of choice-interdependence in the EU, both of which focus on the state's capacity to realise economic justice within its territory. The first example relates to the state's capacity to further the goal of social justice by setting up a progressive regime of taxation that seeks to realise egalitarian principles along the lines described in chapter two. The second example relates to labour standards, which also form an integral part of social justice and social equality.

Although the existing level of economic cooperation and institutional entanglement amongst EU member states significantly simplifies my task of demonstrating that this kind of interdependence has severe consequences even for powerful developed states, it also raises the following difficulty: Some critics might suggest that the EU, rather than presenting a solution to the kinds of problematic interdependences that I discuss here, is actually part of the problem in that it gave rise to an unprecedented level of interdependence that would not otherwise exist. However, I am rather relaxed about this kind of criticism, for it is surely false that the EU could not be both part of the problem (in its current design) and part of the solution (if organised in-line with those social democratic principles I propose). The objection might have some force if

individuals who identify with one another in a number of ways are given the means to work out their own political affairs. Raz's own account of self-determination is a version of this kind, for he argues that 'encompassing groups' provide individuals with a cultural framework that renders the various options we have meaningful to us (Margalit & Raz 1990). Will Kymlicka and David Miller make similar arguments (Kymlicka 1989; Miller 1995b). Steven Wall focuses on the idea of individual autonomy-enhancing 'joint options' that require collective rights to determine a group's own affairs (Wall 2007).

problematic examples of the kind that I discuss would only occur amongst states that had already engaged in a form of institutional integration similar to that which exists amongst EU member states. In this case, the objection would simply be that states should not integrate their economic activities and institutions in such a way. But this is certainly not the case: tax competition as well as downward spiralling labour regulations are a systemic problem that affects nearly all states that are relatively well integrated into the global economy, even if perhaps these problems have become particularly widespread in the current EU where market integration has massively outpaced social harmonization and common labour standards.

7.4.1 Taxation and solidarist values

The first domain that I want to present, as an example for the kind of interdependence that puts into conflict the degree of independence and the substance of choices available, is taxation. Before looking at the empirical facts however, some basic assumptions about the connection between taxation and social justice as well as self-determination need to be introduced. In all contemporary states, choice about forms of taxation, their level and the relative imposition of tax burdens stand at the heart of debates about social justice. Although social justice is of course also a matter of the various formal and informal practices governing economic interaction between private parties, taxation is clearly central for the realisation of social justice. First, the amount of tax revenues will determine the level of resources that the government has available to serve its citizens, e.g. by directly assisting them, by providing public goods, and so forth. Second, levying taxes permits realizing more directly a just distribution of economic resources. Of course, the overall fairness of government action will depend as much on how the government's budget is subsequently used as it does on the distributive effects of taxation. (For example, the net distributive effect of a heavily progressive tax regime may be very limited or non-existent if the revenues are exclusively used to create public goods that in practice only rich people can take advantage of, such as subsidies for cultural activities that are unaffordable to the majority of the population, or the building of public roads when the less well-off have no money to buy a car.) Nonetheless, taxation has historically established itself as one of the core activities by which states can

reduce economic inequality and implement a just economic system. Since all solidarist internationalists at least to some extent also care about egalitarian outcomes that states should bring about in the economic sphere, states should have a just regime of taxation.

The other fundamental value that solidarist internationalists care about is self-determination, understood as collective autonomy. Again, it is not hard to see why solidarist internationalists should therefore also care about the issue of the state's *capacity* to implement a system of taxation. As I argued above, the choice of which conception of economic justice to implement domestically is inevitably part of those choices that a political community must be able to have a say in. And since fiscal policy is so central in bringing about a particular conception of economic justice, choices about fiscal policy must also be considered part and parcel of self-determination. Peter Dietsch who has conducted important normative work on the issue of tax competition and sovereignty makes a similar point when he argues that what self-determination means in the domain of fiscal decision is "the government's task to implement the preference of its citizens with respect to the ratio of the public budget to gross domestic product and in terms of social justice in fiscal policy."[31] Thus, states should enjoy autonomy in setting taxes because choices about taxation effectively are choices about core elements of the conception of social justice that will be in place.

Although I agree with Dietsch's assessment, I think there is also a second, albeit more controversial, way of connecting the issue of self-determination to a specific kind of system of taxation, namely one that is substantively egalitarian: One distinction sometimes made in the literature is that between 'internal' and 'external' self-determination, where the former refers to whether or not the government's policies can be rightfully seen as the expression of the political community's preferences, conception of social justice etc.[32] On what I would consider the most plausible form of solidarist internationalism, 'internal' self-determination understood as collective

[31] (Dietsch 2011a: 2109)

[32] Charles Beitz distinguishes between these two meanings of self-determination (Beitz 2009: 336).

autonomy is only fully realised in a deliberative democratic community.[33] This is because a political community organised along these lines creates an especially strong case for us to conclude that the decisions that are being reached are those of the people. However - and this is the rub- a society cannot conform to this democratic ideal if there are massive inequalities of economic power, income and wealth because these inequalities invariably translate into differences in political power such that some citizens will exercise larger control over political institutions in ways that make such a situation incompatible with the democratic ideal of equal opportunity for political influence.[34] Now if a reasonably egalitarian society is a pre-requisite for a properly functioning deliberative democracy, *and* if such a democracy is itself a requirement for self-determination to be realised to the fullest, then it would follow that if an egalitarian system of taxation is the only possible route to arrive at such an egalitarian economic system, the idea of self-determination (understood as collective autonomy) would by itself speak in favour of such a substantively egalitarian system of taxation.

7.4.2 Tax competition: definition and occurrence

Taxation is an enormously complex issue. To understand the nature of the underlying normative problem, at least some grasp of the empirical phenomenon of government financing and fiscal policy is required. First, fiscal policy (the setting and collecting of taxes) is one of a number of sources of government funding.[35] By and large, taxation is the most important one, for the functioning of an effective tax system is often a pre-requisite to enable the other major source of funding, namely borrowing. Fiscal policy can be analytically expressed as consisting in two kinds of core choices, one about the size of the tax contribution to the government's budget (usually expressed as a taxation/GDP ratio), one about the distribution of tax revenues, where distribution means the relative contribution made by different taxable agents (and, ultimately, individuals) to the budget. Additional choices concern the mix between different types

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[33] Miller makes a similar point, though he does not investigate in this piece in any detail what that implies for the economic structure of the community (Miller 2000: 166).

[34] See my discussion in section 2.5 and (Scanlon 2003).

[35] Others being borrowing, seignorage, the consumption of fiscal reserves (where existent) or the sale of state property (Gruber 2012).

of taxes differentiated along the kind of taxable agent (taxes can be levied on individual persons or on corporate entities) and the locus of tax incidence, i.e. whether taxes are directly levied on economic activity or whether they are incurred at the level of consumption (indirect taxes).

Tax competition refers to the effects that fiscal choices in one state have on the ability to determine fiscal policy and realise other kinds of important social choices in another state, and the strategic interaction that results from such effects.[36] Different types of tax competition will arise for different types of taxes, i.e. there can be tax competition on income taxes, wealth taxes, corporate profit taxes and so forth.[37] One further classification between these types relates to whether tax competition is *targeted* or *general*. Targeted tax competition occurs when a state specifically enacts a tax regime that is aimed at attracting –and does attract- foreign taxable agents. The most obvious instance of targeted tax competition is when a state grants especially attractive tax conditions to foreign agents that are not available to domestic tax payers. General tax competition, by contrast, relates to competition that is not obviously targeted in this way.

Since the external effects of a tax regime depend on the strategic adjustment of taxable agents to difference in tax regimes, and since these strategic choices between tax regimes depend on the ease with which such agents can relocate tax incidence to a more preferable tax environment, it is not surprising that tax competition occurs mainly in relation to taxes on relatively mobile factors. Thus, most empirical analysis of tax competition focuses on the taxation of corporate profits as well as savings and investments. In relation to the former, tax competition arises when corporate entities can strategically allocate the incidence of corporate profit to specific tax environments and thereby put pressure on high-tax states to lower their rates or lose tax revenues.[38] Tax competition on savings occurs when investors can easily relocate their financial

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[36](Dietsch 2011b: 99)

[37] (Avi-Yonah 2000 part 2)

[38] This occurs through the shifting of 'paper profits' between different subsidiaries of a firm incorporated in different tax jurisdictions. See the discussion in (Avi-Yonah 2000: 1586ff.) and (Rixen 2011: 450).

holdings (e.g. cash, shares, bonds, etc.) to locations with low or no capital gains and interest taxes. These jurisdictions often also have strong banking secrecy laws, thereby making it difficult for source states to identify illegal tax evasion. The occurrence of tax competition for financial holdings puts pressure on high-tax states to lower their capital gains taxes and withholding taxes.

Empirical research on tax competition has come to mixed conclusions: whilst the nominal tax rate on corporate profits has indeed declined by about 20% on global average in the 30 years between 1975 and 2005, the level of business tax to GDP has remained relatively stable.[39] This latter fact has led some researchers to conclude that the harm of tax competition is relatively contained.[40] However, more recent research suggests that the anti-alarmist position is problematic for a number of reasons. First of all, many of the less recent studies generally ignore the fact that companies have increased their levels of profitability over this period and, moreover, that the number of incorporated entities has also significantly increased.[41] One reason for this increase in incorporated entities is the (often legal) tax arbitrage strategy whereby rich individuals incorporate themselves and declare their income to be corporate profits, thus reducing their personal income tax level to that of the generally lower corporate tax rate.[42] So the tax revenues from corporate taxes may stem partly from cannibalisation in income taxes. Another effect that explains the lack of decline in total tax revenues is that states have sought to broaden the tax base in order to compensate for the loss in revenues as a result of tax competition by terminating special tax breaks, rules for lower taxation on protected industries, and so forth. The likely result of this is that the real impact of tax competition may therefore be felt only in the future, at which point competition can no longer be compensated by broadening the tax base.

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[39] (Rixen 2011: 449-450).

[40] (Steinmo 2003; Swank 2006). A detailed discussion of the empirical data and different theoretical explanations is provided in (Genschel & Schwarz 2011). For reasons of space, I focus in this section on corporate profits.

[41] (Rixen 2011: 451)

[42] See the detailed discussion of this phenomenon in (Ganghof & Genschel 2007: 61-62)

More important even, much of the less recent research is rather problematic in that it often looks at the wrong kinds of indicators for determining whether or not the relevant kinds of externalities have occurred. More precisely, some of the studies on developed OECD states have simply assessed the overall taxation ratio over time and concluded that states are still in a position to adequately fund themselves. But what these studies neglect is that fiscal policy is as much a choice about the amount of tax revenues as it is a choice about the relative distribution of tax burdens amongst taxable agents. And it is precisely this latter choice that has been eroded in some of the core areas of fiscal policy:[43] For example, Genschel and Schwarz have shown that the distributive effect of tax competition has been to shift the burden of taxation from the taxation of capital and mobile factors towards immobile factors. Whereas corporate tax rates as well as top income tax levels (often to avoid the kind of arbitrage mentioned above) have declined significantly, indirect taxes which tend to be neutral or even income-regressive, for example VAT and the tax wedge on employment (income tax + social security insurance) have remained stable or even increased in many OECD countries.[44] So one clear effect of tax competition in developed states has been a shift in the distributive effects of taxation. This conclusion is also supported by the massive rise in domestic inequality that many Western states have experienced since the 1970s.[45]

7.4.3 Tax competition in the EU

Whilst the last sub-section introduced the general issue of tax competition and provided some empirical evidence, I now want to turn to the specific case of the EU to suggest that the phenomenon is even more pronounced there than it is on a global scale. The most detailed and sophisticated recent study of tax competition in the EU (focusing on the issue of corporate tax) reaches the conclusion that "corporate tax competition in the EU is both different and stronger than in the rest of the world."[46] Another recent study

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[43] As far as developing states are concerned, the more recent findings are even more worrying because in these states, both the distribution and the overall level of tax revenues (measured relative to GDP) has actually deteriorated as a result of international tax competition. (Rixen 2011: 453)

[44] (Genschel & Schwarz 2012: 6)

[45] Of course, this is not to deny that a significant aspect of increasing inequality stems from a growing gap in pre-tax incomes. I discuss how these are partly the result of regulatory competition in section 7.5.

[46] (Genschel, Kemmerling, & Seils 2011: 600)

found that the decline in corporate tax rates in the EU has been over 20% between 1983 and 2008, with most of the downward adjustment occurring since the late 1990s. Based on a sophisticated microeconomic model that accounts for proximity effects between open economies, these authors simulate that under conditions of less economic dependence, corporate tax rates for all EU member states would on average be 12.5% above current levels, with the predicted effect in larger and more integrated EU member states being even more severe.[47]

The explanation that these authors provide stresses several elements that make the EU case different from more general tax competition under globalisation. First, EU member states are massively more economically integrated than the global economy, which increases the likelihood of tax competition: Individual companies should opt to relocate for corporate tax reasons the lower the transaction costs. Since economic integration and market harmonization in the EU have drastically reduced these transaction costs (because the common market lowers the costs of coping with investment restrictions, capital constraints, exchange rate volatility, and so forth), tax arbitrage has gained attractiveness, thereby creating stronger incentives for states to competitively adjust their corporate tax rates.[48] Second, the effects of EU enlargement will be that more smaller and less economically homogenous states will make up the union. The prediction, which has proven quite accurate over the past 10 years of EU Eastern integration does not bode well for the future of EU member states tax autonomy.[49]

Two differences between the EU and the global system are that EU member states have been to a limited degree able to harmonize their taxation regimes, and they have effectively subjected at least some aspects of their choices about taxation to judicial

[47] For example, the expected corporate tax rate in Germany under conditions of less interdependence would be approx. 23% higher. (Overesch & Rincke 2011: 596). For a detailed description of the modelling parameters, see (Overesch & Rincke 2011: 583-589)

[48] (Genschel, et al. 2011: 588)

[49] (Overesch & Rincke 2009)

oversight by the European Court of Justice (ECJ).[50] However, what is interesting about the two issues of harmonization and juridicialisation in the EU is the fact that their potential countervailing effects against tax competition have been extremely limited so far. Concerning harmonization, the only practical measure on which EU members have found a common denominator is a 1997 agreement in which states commit to avoiding bad tax practices in the form of special predatory tax regimes whose aim is to poach tax revenues from other states.[51] Tellingly, this legal instrument only has the character of 'soft law' for all pre-Eastern enlargement EU members.[52] The real consequence of this limited attempt of harmonization to avoid the most blatant tax poaching practices has been to intensify general (i.e. non-targeted) tax competition. Notorious in this regard is the example of Ireland, which cut its targeted tax regime of 10% for foreign-incorporated companies as a result of the EU initiative only to replace it with a general (non-targeted) corporate tax rate of 12.5%.[53]

As far as juridicialisation is concerned, some social scientists and EU legal scholars have argued that so far, most of the ECJ's legislation has in fact had the opposite effect of what one might hope for, namely that the legal regime could protect states with higher tax rates against the effect of competition. Pursuing a 'market access' bias, the ECJ has effectively ruled that protecting a national tax base is not a legitimate basis for restricting market access, thereby perpetuating into law the corporate right to relocate to low tax environments whilst being protected to do business in high taxation areas.[54] Thus, the current position of EU member states can be described as particularly problematic insofar as states have made themselves especially vulnerable to one another's choices without yet introducing a viable cooperative solution to protect themselves against the consequences of tax competition.[55]

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[50] The method her e is generally indirect in that the ECJ has classified certain tax practices as impediments to the internal market of the EU.
[51] (Genschel, et al. 2011)
[52] The instrument was part of the catalogue of EU accession criteria; therefore it has binding force on all post-1997s EU members.
[53] (Kemmerling & Seils 2009: 763)
[54] (Ashiagbor 2013)
[55] One additional important strategy here will be improved information exchanges and transparency.

The crucial point of the issue of tax competition in the EU that I have discussed in this section is that it undermines both, the realisation of an egalitarian conception of social justice (the *solidarist* element of solidarist internationalism), and the collective autonomy of the political community (the *internationalist* element of solidarist internationalism). This latter threat comes in two varieties. First, in the obvious way that communities as a result of tax competition lack the ability to realise certain types of choices, namely the choice of simultaneously maintaining a distributively just system of taxation and receiving the amount of tax revenues necessary to implement other important communal choices. The second, less direct threat to self-determination is that the substantive outcomes that result from tax competition, namely economic inequality amongst citizens, *also* jeopardise the exercise of collective autonomy. All solidarist internationalists agree that self-determination (understood as collective autonomy) should be seen as most adequately implemented where political communities have realised a form of democratic self-rule. But if large inequalities in material means undermine democratic government by permitting some citizens to wield wildly disproportionate influence over collective decision-making, and if these material inequalities are the result of tax competition, then the latter also undermines self-determination's internal requirements.

7.5 The reality of complex interdependence (II): Labour Standards

The second issue that I want to focus on in order to render more convincing the idea that solidarist internationalists should opt for supranational authority and relinquish exclusive non-interference rights is the issue of labour regulation. Again, I begin by briefly delineating the connection between this issue and social justice / collective autonomy before I describe the current effect of complex interdependence in this area. By labour standards, I mean for the purpose of this chapter a set of rights that are robustly enjoyed by employees (either individually or collectively). Such rights come in substantive as well as procedural forms. Substantive individual labour rights introduce legally required minimum forms of employee protection into the employer-employee relationship. Paradigmatic examples of these are the right against discrimination in the workplace, rights to payment during periods of illness and paid holidays, maximum

working hours, health and workplace safety regulations, protection against unfair dismissal, maternity leaves, and so forth.[56] By contrast, procedural labour rights regulate and protect permissible conduct of employers and employees in pursuing their respective goals in their strategic interaction with one another. Fundamental procedural labour rights are the right for employees (and employers) to organise collectively and to threaten and initiate strikes and other forms of industrial action. Thus, the International Labour Organisation's (ILO) commits all of its 183 member states to "respect, to promote and to realize (...) freedom of association and the effective recognition of the right to collective bargaining."[57] Other important procedural rights that have sometimes been granted to organised labour are specific forms of participation of employees in company decisions and other forms of workplace democracy: for example, Germany's famous co-determination law requires that the supervisory board of companies with more than 500 employees is composed in equal proportions of employees' and shareholders' representatives.[58]

7.5.1 Labour rights and social justice

To understand how the existence or absence of labour standards bears on the realisation of the values that solidarist internationalists cherish it is useful to distinguish between these more substantive and the more collective and procedural rights.[59] As far as the former are concerned, the plausible thought is that substantive rights such as the right to a minimum wage or paid holidays can fairly straightforwardly be derived from the idea of terms of fair reciprocity that free and equal persons cooperating in the production of social goods will offer one another. Other substantive labour rights, such as the right to equal pay and non-discrimination can pretty directly be grounded in the

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[56] For a collection of various instruments and conventions and their content, see the ILO's website: (http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO:::)

[57] ILO *Declaration on Fundamental Principles and Rights at Work* (1998), Art.2a

[58] Notably though, the chairman of the board (determined by the company's shareholders) has the decisive vote in cases of stalemate (Kramer & Peter 2010). For cross-national comparisons between worker council regimes, see (Rogers & Streeck 1995).

[59] I do not claim that these can always be clearly separated from one another in practice: for example, an adequate protection of the procedural right to collective bargaining will require specific individual protection of unionized employees from dismissal etc.

requirements of fair equality of opportunity.[60] Over and above this Rawlsian justification, solidarists leaning towards more Republican conceptions of social justice will find no difficulty in demonstrating that minimum substantive labour rights are a requirement of justice because they are indispensable to protect each citizen from private domination in the economic sphere effectively and robustly.[61]

How do the more procedural and collective rights relate to solidarist internationalism? Here, Republican solidarists can simply point out that protection of employees against the structural power advantage exercised by capital owners and employers under capitalism requires more than minimum substantive rights, to wit, they require rights and procedures that allow employees to collectively counter such domination by collectively organising and bargaining. More liberal solidarist internationalists may rationalise procedural labour rights in two distinctive ways: one is simply by reference to the likely outcomes of collective bargaining on the basic structure of economic organisation under capitalism.[62] A second Rawlsian argument for the protection of procedural labour rights –including a right to workplace democracy- focuses on the social bases of self-respect.[63] Rawls suggests that persons cannot develop and maintain such self-respect where other persons continuously exercise control over them and frustrate their endeavours. Applying this thought to the area of employer-employee relations, Nien-Hê Hsieh argues that even if substantive rights may help to protect the social bases of self-respect amongst workers to some extent, there are efficiency constraints on implementing these substantive rights. Procedural rights provide a superior means of protecting workers' self-respect.[64]

Finally, solidarists like David Miller may argue that procedural labour rights are essential for realising the value of social equality, understood to be a concern independent from social justice:[65] it is quite plausible to think that massively unequal

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[60] See my discussion of this point in chapter 3, section 6.
[61] (Pettit 2012b: 111)
[62] See the various chapters collected in (Hayter 2011)
[63] (Rawls 2001: 74)
[64] (Hsieh 2008: 92) (Hsieh 2005)
[65] For a position of this kind, see (Miller 1999)

distributions of power over the economic conditions that prevail in society also inevitably impair people's ability to share a social world as equals, and the procedural labour rights are one important element to prevent these kinds of inequalities.[66] In sum then, all of the theorists mentioned in the category of solidarist internationalism have strong reasons to favour domestic economic arrangements in which both strong substantive and procedural labour rights are robustly protected.

7.5.2 Labour Standards and Complex Interdependence

Globalisation is widely thought to have two kinds of effects on the existence of strong labour standards. The background condition against which these effects are occurring is a dramatic change in global patterns of production, with an ever increasing share of world GDP being attributable to multinational corporations (MNCs) and transnational productive networks. To mention just one indicator of this, MNCs increased their share in global GDP from 7% in 1990 to approximately 20% in 2001.[67] The first effect is that of regulatory competition similar to what we encountered in relation to taxation: As a result of this change, decisions to allocate capital to productive assets are increasingly subject to comparisons between production-sites in separate jurisdictions to which such corporations have access. Since real effective labour costs are at least partially determined by labour standards –after all, there are real costs involved for employers in providing for things like sick-leave, employee healthcare etc.- companies will opt for lower labour standards where possible. Of course, the costs associated with the provision of labour rights will be only one factor in the overall calculation of capital owners regarding where to create and upgrade production sites: other obvious factors like market size and access, infrastructure, regulatory risk, general skill level and reputational costs will also play an important role. Nonetheless, where these other

[66] The difference between the Republican and the relational egalitarian justification for procedural labour rights and workplace is this: whereas the Republican's concern is that no person should be dominated –which is a non-comparative concern- the ultimate ideal of relational equality is that persons should have equal power in their interaction. The individual's interest in Republican non-domination is not compromised by having more power than others. By contrast, the distinctly egalitarian feature of the ideal of relational equality is that *both*, the person having less and the person having more power suffer in a relationship characterised by unequal power because they cannot realise the value of fraternity amongst themselves: it requires equal power. This particular commitment gives us comparative and unspecific egalitarian reasons to object to inequality. These reasons differ from the Republican concern that each person has a justified claim not to be dominated.

[67] (Bercusson & Estlund 2008: 3)

factors are equally favourable, the costs associated with the protection of labour rights might be decisive. Thus, states face pressure to adjust these labour standards enshrined in law to be no more demanding than those of otherwise equally alternative sites for direct investment.

The empirical evidence of such a regulatory race to the bottom is heavily disputed, with early warnings having given way to a more optimistic position which points out that labour standards in advanced economies have not significantly deteriorated and that conditions in some countries have actually improved.[68] However, more recent and nuanced studies suggest that there are industries even in advanced economies, namely heavily-labour intense ones, where downward adjustment has taken place to some extent.[69] Moreover, the optimistic position fails to account for what Banks calls 'vertical competitive pressure' which is the phenomenon by which states with lower labour standards are effectively prevented by the forces of global regulatory competition from improving their standards to a minimally decent regime of legal protection that is proactively enforced by state institutions.[70] Admittedly, these vertical competitive pressures operate mostly on developing states, but there is certainly a case to be made that they may play some role in legislative decisions in weaker economic EU member states in Eastern Europe (e.g. Bulgaria and Romania). This threat is likely to be exacerbated by the ongoing global economic crisis.

The second effect of global changes in production patterns as well as financial markets does not concern the overall regulatory labour regime that states can afford to have in place, but rather the effectiveness of the core procedural labour rights that I mentioned above, namely the right to organise, to bargain collectively, and to have in place certain limited provisions of workplace democracy. The relatively straightforward point here is that in the face of a massive increase in the mobility of capital, the 'fair value' of these procedural rights has diminished, sometimes dramatically so, because organised domestic labour now always faces the threat of relocation of production. To give just

[68] See the instructive discussion in (Banks 2006).
[69] (Banks 2006: 88)
[70] (Banks 2006: 88)

one indicator of the impact that this change has had on employees' collective bargaining power, consider the development of real wages in the largest advanced economy, the US. (Real wage stagnation appears to be a sign that labour has little bargaining power): Since the mid-970s, the bottom 90% of wage earners have been able to increase their income by a meagre total of 10%, whereas overall per capita income has increased by 64%, thus providing the top 1% in the income distribution (i.e. individuals not generally on the labour side of the economic bargain) with a staggering increase of 232%.[71]

Of course, the US has set itself on an especially stark trajectory of inequality and the results are not nearly as striking in most EU member states. Moreover, this spectacular increase in income inequality cannot be fully explained in terms of shifts in bargaining power from organised domestic labour to globalised capital – other factors are a shift from the significance of manual labour to knowledge and technology- but these figures give at least a hint as to the prevailing dynamics. The ability of organised labour, and hence the fair value of labour rights to collective bargaining, has further eroded as a result of fragmentation between different skill groups amongst the workforce.[72]

7.5.3 Labour standards and EU regulation

European states have traditionally been amongst the states with the highest labour standards and legally guaranteed strong bargaining positions for unions. Moreover, research has found relatively little evidence that labour standards are eroding as a result of regulatory competition.[73] However, the de facto value of procedural labour rights has arguably declined even in Europe as a result of the changing power dynamics between capital and labour over the last 30 years of globalisation. Again, European integration has acted both as a catalyst of complex interdependence and, within certain limited domains, as a remedy for the erosion of labour standards and safeguard of meaningful procedural labour rights. As far as the first of these is concerned, European market

[71] (Wisman 2013: 3) Another indicative figure that Wisman mentions is that "whereas productivity increased by 90% between 1973 and 2008, average household income increased by about 15 per cent, which for a 35-year period is not far from full wage stagnation, providing the owners of capital with a huge windfall."(Wisman 2013: 4).

[72] (Stone 2008)

[73] (Banks 2006)

integration has greatly simplified and harmonized the regulatory environment in which European companies operate, thereby making choices about relocation more easily accessible for companies. In an open European market with well-connected transportation infrastructure (partly funded by the EU), companies are guaranteed market access independent of where they produce their goods and services.

On the other hand, the EU has generated certain compulsory legal instruments, general standards of labour law, and avenues of legal remedy that are enforceable across all member states, thereby somewhat alleviating the threat of 'social dumping'.[74] Thus, the EU has introduced a vast array of substantive labour standards, such as rights against discrimination, workplace health and safety regulations, and so forth. Thus, the Charter of Fundamental Rights of the European Union contains under Article 12 the "the right of everyone to form and to join trade unions for the protection of his or her interests."[75] Moreover, Title IV which bears the heading "Solidarity" covers workers' rights to information about their company, a right of collective bargaining, protection against unfair dismissal, fair working conditions, and so forth. But important as these declaratory clauses are, the Charter is only binding on EU institutions and national legislators in those cases where they implement EU law into national law. Moreover, Poland and Britain have largely opted out of the Charter, in particular the most relevant title IV covering social and workers' rights.[76] In addition, a number of directives have sought to harmonize and juridicialize certain aspects of procedural labour rights. For example, the European Works Council Directives (1994 & 2009) have introduced and improved the rights of employees in companies that have more than 1,000 employees and operate in at least two EU member states.[77]
Despite these relatively limited attempts to harmonize European labour law, the core legal determinations of labour standards –including regulation of collective bargaining and provisions regarding institutionalised 'social dialogue' between employee and employer organisations- have until relatively recently been considered off limits for EU

[74] See the discussion in (Stone 1995), (Bercusson 2009)and (Hepple 2005 chapters 8 & 9).
[75] (European Union 2009)
[76] Though the legal effect of these opt-outs is a matter of some debate, see: (Pernice 2008)
[77] EU-Directives 2009/38/EC and 1994/47/EC

regulation, falling in the exclusive prerogative of domestic national legislation.[78] But more recently, the EU has also created through its internal market legislation particular kinds of problems for organised labour that it does not face in other advanced economies, and these increasingly appear to threaten the autonomy of states to determine their labour law regimes and to weaken labour unions.

The issue here relates to 'posted workers' and has generated a massive amount of debate in recent years following a number of controversial decisions by the ECJ (often called the Laval quartet decisions).[79] The issue of posted workers in the open European market is the following: Companies from all EU member states enjoy the freedom of offering their products and services all over the union. Now if a company incorporated in one member state decides to offer its services to a client in another, it may decide to post some of its employees in that other state to render its service and fulfil its contract. Since these 'posted' workers[80] are employed under the law of the sending state, there is a question as to which labour standards regime –either that of the sending state or that of the hosting state- applies to the workers posted in this way. The EU posted workers directive determines that the hosting state's legal regime applies only those areas of the 'hard nucleus' of the employment relationship (which includes maximum working hours, minimum pay, health and safety regulations), whereas all other areas of the employment relation are governed by the sending state's laws.[81]

The problem that has arisen in the course of workers' postings is that this practice has been used extensively by companies to undercut existing collective bargain regimes in states with stronger unions and labour standards. This practice has been especially pronounced since the 2004 accession of Central and Eastern European states to the EU: Economists estimate that up to 10% of the major sending states' (Poland and the Baltic states) labour force have at least temporarily found employment in other EU

[78] (Bercusson 2009: 17)
[79] (Barnard 2008: 499)
[80] A worker counts as 'posted' in another EU member state for up to 12 months of continuous employment. (96/71/EC, Art. 2).
[81] EU directive 96/71/EC, Art. 3,1.

member states.[82] As Dolnik and Visser suggest, "the East-West gap in labour costs associated with taxes, employer levies, and pay are a major economic incentive for clients, contractors, and posted workers."[83] More generally, these postings provide the "contours of a transnational European market for low-skilled labour (...) in which the boundaries between mobile labour, posted workers, leased agency workers and self-employment are fluid. At the margin, these changes in the functioning of the European labour market are under pressure from illegal migration, informal and undeclared labour, the circumvention of labour rights, taxation and social security both in the home and destination countries."[84]

In this already worrying environment, recent ECJ decisions have further threatened to undermine the traditionally strong labour regulations of most EU member states. The issue under consideration for the court in all of these quartet decisions was to what extent national labour standards and informal bargaining arrangements are permissible to interfere with the freedom of movement in the EU. In each of these decisions, the ECJ ruled that various kinds of labour activities to protect against forms of 'social dumping' are unlawful under EU law. Thus, in *Laval*, the ECJ ruled that sympathy strikes by Swedish unions to prevent a Latvian company from undercutting Swedish minimum wages was unlawful, whereas strike action against relocation was deemed illegal in *Viking*.[85] Crucially, the court applied a new proportionality test to the domestic right to undertake industrial action, thereby effectively hollowing some of the strong constitutional provisions that prevail in many European countries to the unconditional right to strike. Additionally, the ECJ pronounced that its decisions have horizontal effect, i.e. the have binding force on economic actors all over the EU. As Deakin observes, "First, it seems to provide the courts, when applying the law of free movement, with a power to review national regulatory standards not simply where such standards operate above an abstractly defined threshold of undue restrictiveness, but more concretely where they operate in excess of the standards applying in the *least*

[82] (Kaczmarczyk & Okolski 2008)Quoted in: (Dølvik & Visser 2009: 498)
[83] (Dølvik & Visser 2009: 499)
[84] (Dølvik & Visser 2009: 499)
[85] See the case summaries in (Barnard 2008: 464ff.).

regulative Member State which is relevant to the issue at hand. It (...) should be read as imposing maximum, not just minimum, standards, at least in contexts where issues of free movement arise."[86]

To sum up then, the overall picture on the effect of complex interdependence on labour standards in the EU is similar to the one on tax competition: whilst the regulatory regime of the EU in principle provides the solution against general competitive pressures on solidarist values that arise as a result of more or less inevitable technological and economic changes, it has thus far fallen quite short of effectively implementing substantive legal standards that would help to protect social justice and collective autonomy throughout the EU.

7.6 Two objections

7.6.1 The 'unstable compound' objection

One important objection against what I have argued could be the following: In sketching solidarist internationalism, I have put together two elements that do not work together, namely (a) an outcome-focused conception of domestic social justice and (b) an autonomy-focused account of self-determination. Now the problem is the following: an internationalist position that claims that it matters, as far as the morality of interstate relations is concerned, both that political communities need to have an autonomous sphere of choice and that they need to realise a thick conception of egalitarian justice domestically runs the risk of being incoherent. The reason is that it requires that communities be free to choose their own conception of social justice and it also requires that they pursue a particular substantive conception of it. So irrespective of whether we should believe in one or the other, we cannot maintain that both can together simultaneously form a coherent outlook.
I think this objection is ill-conceived. One of the main points that I sought to establish with the example of tax competition was that drastic increases of economic inequality are themselves threats to communal self-determination. A state where the rich can buy

[86] (Deakin 2008: 581-582)

votes, determine what goods get produced, what the natural environment looks like, what is written in newspapers and aired on television (and so forth) is not a state that represents a political community, it is rather only a vehicle for the advancement of the interests and aspirations of the rich. So if the argument from economic inequality to democratic self-government is sound (see section five, chapter two of this thesis), and if self-determination for all intents and purposes needs to be based on democratic self-rule of the people, then self-determination demands certain kinds of substantive outcomes as an internal matter, rather than as a separate value that needs to be weighed against self-determination and which stands in conflict with it. I mention this objection because it strikes me that a number of solidarist internationalists, most notably Rawls and Miller, whilst stressing the close connection between fully realised self-determination and (deliberative) democracy, have somewhat ignored in their writings on international justice the intimate connection between democracy and economic equality that they are happy to acknowledge in discussing domestic social justice.[87]

7.7.2 Has integration gone too far? Responding to the criticism from the Left

This chapter has presented the case why solidarist internationalists should both embrace the formation of supranational institutions like the EU, and should at the same time vigorously fight for such regulatory norms and institutions that will better protect the domestic social democratic accomplishments through these supranational authorities. But could a solidarist internationalist not plausibly take just the opposite view, namely that in the light of the empirical evidence I presented (in particular the fact that presently existing EU institutions have to some extent *exacerbated* inequalities), we should dismantle the EU and return to a situation in which states are less economically integrated and do not need to accept legislation by supranational authorities like the European Court of Justice?

Perhaps most prominently, this position has recently been defended by a number of German left-of-centre social researchers, most notably Fritz Scharpf and Wolfgang

[87] See e.g. (Miller 2000) and (Rawls 2001)

Streeck.[88] According to their analysis, the EU is *categorically* unable to move towards more social democratic regulation in terms of the output generated by its policies. Their empirical assessment is therefore similar to that proposed by Hayek (see the introduction), yet they obviously draw the opposite moral conclusion. If their assessment were true, it would invalidate the key argument of this chapter, i.e. the thought that solidarist internationalists –amongst whom I would include Scharpf and Streeck– should advocate more European integration. If they are correct, then instead of pooling more and more of their domestic problem-solving capacities in supranational authorities, social democratic states ought to roll back European integration and, much like European states that decided against EU membership in the first place, should seek to protect social democratic values at the domestic level or through much looser forms of interstate cooperation.

My response to their position, which I discuss in more detail in the next two sub-sections, has two parts: First, I explain why I hold their empirical assessment to be importantly mistaken in two respects, namely, first, their deterministic assumption that EU institutions are somehow categorically incapable of implementing social democratic policies, and, second in their belief that it would be comparatively easier to return to a constellation of autonomous individual nation states that can each adequately implement the domestic vision that solidarists cherish. I contend that once realistically assessed, we will see that transforming the present 'pro-market bias' of European institutions is much more likely to yield this result than a futile return to pre-globalisation social democracy. Second, I suggest that normatively, these authors fail to adequately take into account one additional consequence of European integration that solidarist internationalists have reason to value, namely the fact that states that already have realised the social democratic vision domestically create powerful incentives for other states to follow in their footpath: the EU has proven to be the most successful 'convergence machine' for non-welfare states to move in this direction.

[88] (Scharpf 1999, 2009; Streeck 2013)

7.7.2.1 The empirical basis of anti-EU solidarism

In their most recent publications, both Streeck and Scharpf paint a dark picture of the EU's inevitable bias for market access, 'negative integration' and downwards pressure on welfare states, which they see as massively exacerbated by the current financial and economic crisis and monetary union.[89] What their analysis ignores are some of the counter-movements against purely market-access based EU regulations. For example, Vandenbroucke discusses in some detail the European-wide debate about the EU services directive and how transnational democratic pressure ultimately led to a much less 'neoliberal' outcome than what the original proposal by the EU Commission.[90] Similar examples of democratic resistance to pro-market policies can be observed in other areas, e.g. food and health regulation. Others have shown how the EU is slowly but progressively developing its 'social dimension' as the result of very gradual harmonization of welfare state provisions across member states, most notably through the Open Method of Coordination, and how at least some of the EU's institutions have started to focus more on remedying social exclusion and poverty (e.g. in the Horizon 2020 framework). Similarly, the inclusion of Article 9 in the Treaty of Lisbon and the coming into force of the Charter of Fundamental Rights provide some evidence that social democratic principles can be injected at the European level.[91] Of course, my previous analysis has pointed out that this 'social dimension' remains much too weak and needs dramatic enhancement. But the defeatist assumption that any move in such a direction will be impossible strikes me both as implausible and counter-productive.

But perhaps there is a deeper explanation of why progressive change at the EU level is impossible. At various points of his argument, Streeck in quite general terms appeals to the fact that the kinds of solidarity relations necessary to sustain social democratic policies do not exist and cannot be created beyond the confines of national communities: people are generally unwilling to accept redistributive policies unless they

[89] (Scharpf 2009, 2011; Streeck 2013)
[90] (Vandenbroucke 2013)
[91] Article 9 reads: "In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health." (European Union 2012).

share some deeper communal attachment to one another.[92] In other words, Streeck seems at times to base his specific case about the EU's inability to move in a direction more acceptable to the solidarist internationalist on a general approval of the kinds of '(liberal) nationalist' perspectives mentioned in the introduction. Does this appeal provide a sound basis for the social democratic case against the EU?

Responding to the position of liberal nationalists would require a much more detailed discussion than I can present here.[93] But two points suggest that the nationalist claim that cross-national solidarity impossible is empirically implausible. First, research into the level of 'compliance' in welfare states (including multi-national ones) suggests that one decisive factor beyond common identity is in fact a general sense of institutional fairness: for people to be willing to share the costs of a welfare state it is crucial, indeed often more crucial than common identity, that participants see the arrangement as a scheme of fair burden sharing.[94] Second, that there clearly are cross-national manifestations of solidarity that are motivated by factors other than common national identity. It is therefore not clear why a shared sense of 'Europeaness' or a shared sense of being joint subjects to common institutions that are meant to advance justice amongst us might not be sufficient for people to accept certain forms of solidarity beyond the state.[95]

The second empirical claim that we must question in the anti-EU position is the assumption that reversing EU integration will contribute to the solidarist cause. Returning to a pre-EU situation in which current member states (equally) regain political autonomy and realise substantive social justice is much less likely to be a real alternative than the materialisation of an EU that enacts substantially different policies. As we saw, the solidarist trilemma does not derive uniquely or even primarily from the

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[92] (Streeck 2013: 221)

[93] This thesis originally contained a chapter discussing the empirical requirements of cross-national solidarity, defending the possibility of such a form of solidarity against the liberal nationalist challenge. For reasons of space, this chapter had to be excluded. For some of the core arguments presented there, see: (Nicolaïdis & Viehoff forthcoming). For poignant general criticism of liberal nationalism's empirical premises, see: (Abizadeh 2002)

[94] (Rothstein 2011) (Holtug 2010)

[95] See the discussion of this point in (Habermas 1998) and especially (Habermas 2004)

existence of the EU institutions, but from quite fundamental economic and technological changes that are substantively irreversible and put pressure on each advanced economic welfare state globally. The problems of tax competition and the competitive erosion of labour standards are as real amongst non-EU members as they are between them. It is in fact surprising that Streeck opts for the reversal of current supranational integration (what Jürgen Habermas has criticised as Streeck's appeal to a "1960s circle the wagon mentality"[96]), given that he consistently mentions the technologically induced imbalance between globalized capital markets and nationally organized financial regulators.[97]

Finally, we should add to this point that *even if* the EU were solely causally responsible for the decrease in problem-solving capacity of the welfare state, this of course does not show that reversing EU integration is a realistically feasible option: It is very hard to imagine how a state would go about undoing some of the deep changes to domestic economic law that EU membership has caused. As Lech Walesa once quipped, it is not difficult to turn an aquarium into a fish soup – but the reverse turns out to be quite tricky.

7.7.2.2 Taking sovereign equality seriously: the EU and welfare state promotion

The second, normative argument that speaks against Streeck's and Scharpf's anti-integration stance, stems from the value of sovereign equality and the consequences of the EU's existence. Even if the EU has partially contributed to an increase in economic inequality amongst its traditionally more social democratic welfare states, it is hard to deny that its existence has in fact created incentives –and continues to create incentives- for many states previously outside the circle of Western European welfare state capitalism. As a result, many states in the course of preparing for, and then joining the EU have in fact come significantly closer towards approximating the solidarist internationalist's ideal. Given that solidarist internationalists deem the realisation of this ideal equally valuable in all political communities, they should endorse an institutional

[96] (Habermas 2013: 142)
[97] E.g. (Streeck 2013) p.126

mechanism that has this consequence. In a sense, one could even argue that the EU is an institutional mechanism –the most successful one of which we are aware- to satisfy something like John Rawls's duty of assistance that liberal and decent political communities have towards those presently unable to be well-ordered.[98] Of course, I am not claiming here that all recent EU member states were 'burdened societies' according to Rawls's definition of that term prior to EU accession. But the fact that some states (I am thinking here e.g. of Southern European states) have moved from dictatorships to relatively well-functioning liberal democratic welfare states in the space of three decades and are extremely unlikely to reverse course -even under current conditions of financial and economic crisis- is certainly partly attributable to the existence of supranational EU institutions. Compared to all other actually existing political arrangements that seek to make good on helping other political communities to become self-governing and just, one cannot help but think that at least in this respect the EU has been a spectacular success. In making this last claim, I find myself in full agreement with one of the more optimistic luminaries of German social democracy, the political theorist and sociologist Claus Offe, who suggest in the face of the current economic crisis that:

> as a supranational authority, [the EU] is a common political resource that can be used, if properly designed and further developed, for bringing order and control to not just the political economy of Europe but also for defending peace and democratic civility on the continent. It could even be argued that the distinctiveness of cultural legacies and identities of European nations can be preserved and protected against homogenising market forces only through the help of supranational agency. In view of these precious capacities of the EU of being a catalyst of supervisory control and cooperation, it appears frivolous to even consider the dissolution of the EU through a dynamic of re-nationalisation as an acceptable way out of the crisis.[99]

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[98] (Rawls 1999b)
[99] (Offe 2013: 597)

7.8 Conclusion

In this and the previous chapters, I have presented transnational and internationalist arguments to motivate the idea that more ambitious principles of social justice, in particular more ambitious principles of economic justice, are applicable to the EU. The very different nature of the two strategies that I have pursued raise an important question: How, if at all, can these two motivating strategies be rendered coherent, or, put differently, is it possible to devise an institutional arrangement for the EU that respects both kinds of arguments that I have advanced? Critics will suggest that the transnational and the internationalist outlook will inevitably come into conflict because they start from opposing premises: Whilst transnationalism insisted that obligations of substantive justice can arise whenever persons jointly produce important social goods, or when they charge an agent with exercising public power for the common good, solidarist internationalism was premised on the idea that domestic social justice and collective autonomy must have a special place in our normative thinking. So even if setting up supranational authorities that help each state to better conform overall to a domestic conception of social justice and improve collective autonomy is consistent with the internationalist outlook, letting these authorities engage in substantive redistribution between EU citizens living in separate states –as the transnational arguments required- seems at first incompatible with the solidarist internationalist premise that domestic social justice enjoys some kind of primacy when it comes to substantive justice.

Contrary to what these critics might suggest, it seems to me that the conflict need not be as stark as the last paragraph suggested once we seek to devise actual institutional arrangements that best conform to the various reasons we have to care about social justice in the EU. On the one hand, putting it in terms of a stark contrast neglects that even from the internationalist's perspective, certain types of inter-state transfers may be positively required. Recall that solidarist internationalism does not amount to strong statism, the claim that as a conceptual matter, no principles of justice can be required between separate sovereign states, because solidarist internationalists maintain that over and above their core commitment to domestic social justice and collective autonomy,

there is also the normative requirement that political communities interact on fair terms with one another. So, for example, if all EU member states have given up some authority because this is likely to improve each state's collective autonomy and capacity to realise social justice domestically, then in the event that some state –contrary to what was expected- ends up worse off as a result of submitting to the supranational authority, some form of assistance will be in order even on the internationalist outlook. And where an institutional system that state agents have collectively set up foreseeably generates winners and losers with changing identities over time, then even on this position the most reliable way of safeguarding fairness in their interaction may be the introduction of some redisitributive supranational mechanism. This, one could argue, is the lesson that the EU member states participating in European monetary union are now slowly coming to realize.

On the other hand, transnational arguments for substantive justice between EU citizens put forward in chapters four to six, important as they are, can be interpreted as giving rise to egalitarian obligations that are possibly less extensive than those we see within each political community, where the degree of mutual interdependence is still stronger than at the EU level. Take the example of fair equality of opportunity: given the degree of competition for positions of authority within each EU member state, it seems plausible that there are for the moment somewhat stronger reasons for realising this ideal domestically, which permit us some priority in realising the ideal firstly amongst members of individual EU member states, even if its implementation at the EU level is ultimately required.

So even though I would not deny that the internationalist position is motivated ultimately by premises about the intrinsic value of self-determination that the transnational does not (or at least need not) share, my point here is that embedding at least certain more substantively egalitarian principles of economic justice at the EU level may be compatible with both these outlooks. In those domains of state activity where European integration has advanced the furthest, the transnational case for interpersonal comparison in regarding equality of opportunity and resource holdings will be stronger and the internationalist insistence that domestic social justice takes on a wholly different

character will be correspondingly more difficult to justify. One of the key lessons that the discussion of chapters four to seven has attempted to deliver is that our reasons for caring about egalitarian economic institutions are manifold and multi-facetted. If this is true, then it would indeed be surprising if different reasons always pointed in the direction of the same kind of institutional design, especially when attempting to formulate principles for an enormously complex and unfamiliar institution like the EU. Which kinds of institutional proposals may be compatible with all or at least most of these reasons is the subject to which I now turn in the final chapter.

Chapter 8

Institutional Design: The EU Social Minimum

8.1 Introduction

Even readers broadly sympathetic to the arguments pursued so far may be slightly disappointed by the lack of concrete institutional proposals for improving the justice of EU institutions. This is partly a result of the pluralist stance on social justice that this thesis has adopted: if some individual and determinate condition triggered the full set of institutional requirements that egalitarians favour domestically, then this thesis could simply conclude by investigating whether this triggering condition were met at the EU level, and institutional solutions it required at the European level. But as I have argued, our reasons for caring about the social and economic institutions that egalitarians favour domestically are various and multi-facetted, and so the relevant question about the EU case is which of these reasons may be relevant there. Accomplishing this task has occupied the larger part of this thesis. But having completed this task, it would indeed be unsatisfactory if I did not also sketch the kinds of institutions and public policy measures that plausibly follow from bringing into reflective equilibrium the different moral concerns we have discussed. Doing this is the aim of this final chapter.

Moving from philosophical argument to actual public policy is not an easy task. First of all, such an exercise requires addressing some difficult questions that were not part of our previous discussion: Once we move to the level of institutional design, we need to consider further issues such as incentive effects and feasibility concerns to determine which of various possible policy proposals to adopt. A second difficulty is more theoretical: focusing on the basic structure requires that one take a holistic stance on how all policies and institutions *together* advance a philosophically grounded conception. But focusing on particular proposals for existing institutions then invites the challenge that all one is putting forward are makeshift recommendations that do not

cohere with any systematic and foundational account of justice.[1] Though I think that these difficulties provide a serious challenge to anyone who moves from theorising social justice to offering particular viable (i.e., realistically feasible) policy proposals and institutional blueprints, I also think that political theorists cannot simply use this as an excuse for leaving to practitioners or empirical social scientists the task of thinking about how to move in the direction of realising our conception of social justice. Even moving away from injustice by however small a step requires serious normative thinking: there may be trade-offs on the way that no amount of empirical research can resolve.

The one institutional proposal on which I focus in this chapter is a basic social minimum for all EU citizens (for short: an EU minimum). My argument here is that such an EU minimum suggests itself as one realistically feasible policy that is compatible with a majority of the arguments for substantive economic justice at the EU level we discussed in previous chapters. Thus, I show that such an EU minimum is not only acceptable to those endorsing the direct and indirect *transnational* case for more substantive economic justice at the EU level. It will also be acceptable, on instrumental or pragmatic grounds, to internationalist thinkers insisting on the continued relevance of national self-determination. The next section (section 8.2) defines the general idea of a social minimum and explains what practical and normative parameters any particular account of a social minimum must specify. The following section (section 8.3) moves to the specific case of the EU minimum and explicates the general policy mechanism that such a minimum would require at this supranational level. I also consider in more depth there why I think that the EU minimum is realistically feasible in the current context of European integration: to do so I address in some preliminary fashion how such a minimum may be funded. Next I turn to the issue of justification: Section 8.4 explains why such a minimum can be thought to be a desirable policy proposal on which direct and indirect *transnationalist* perspectives converge. In section 8.5, I make the case that even though an individual-based EU minimum would not be distributively neutral between EU member states (and indeed is not meant to be so), it may still be

[1] For a discussion of this problem in the context of theoretical defences of socioeconomic rights, see: (Waldron 2011: 803ff.)

sufficiently modest to accommodate internationalist concerns: even those who care about the intrinsic value of state autonomy and sovereign equality should be on board once we have carefully spelt out the relevant feasible alternatives to the introduction of such a minimum. Section six concludes.

8.2 The idea of a social minimum

A social minimum is the bundle of resources that a person requires to live a minimally decent life in her society.[2] A 'domestic social minimum policy regime' is a set of institutions and policies that a nation state has in place to make sure that every member is guaranteed 'reasonable access' to such a minimum.[3] The rationale for enacting a social minimum is that no individual should fall below a certain level of resource holdings and opportunities. Different moral justifications may be brought forward to argue for such a minimum level of resource holdings, and indeed, different arguments may suggest different conceptions of what the minimum must include. Moreover, a systematic proposal for such a social minimum policy regime requires not only a justification of what the social minimum consists of but also an account of how it could justifiably be funded and on what basis and conditions it would be supplied to its members.

8.2.1 Metric of Assessment and Methodology

One question that every social minimum proposal must address concerns the composition and level of provision that make it up. How are we to define what is necessary to lead a minimally decent life? Here, a number of approaches to the idea of a social minimum are possible. One question that separates theorists concerns the relevant metric according to which the social minimum should be conceived: are we to think of a bundle of material resources, or perhaps a set of capabilities or a level of welfare that determines what is required for a person to enjoy a minimally decent

[2] (White, S. 2004: 3)
[3] On the notion of 'reasonable access' see: (White, S. 2004: 3)

standard of living?[4] Since I do not mean to engage with the difficult foundational issue of which relevant metric we should choose, I simply assume here that different accounts will converge once we think about setting up a social minimum policy regime in practice, i.e. proponents of different metrics will agree that a bundle of the 'all purpose means' of money will be necessary and perhaps also sufficient to bring people above the social minimum.[5]

A second question concerns the relative adequacy of such a minimum. Can its level be determined independently of the level of wealth that obtains in the relevant group? If we defined the minimum as what is necessary to meet certain objective biological needs (such as adequate nutrition, clean air, and shelter), then such a standard could be defined independent of the overall level of affluence in the social group. But the kind of life this enables may fall quite short of what we should mean by a 'decent' standard of living, and so this conception seems to mistake a *subsistence* minimum for a *social* minimum. If we think about a decent standard of living as one that makes a person an acceptable member of her social and political community, then we also need to focus on *relative* holdings of resources, opportunities and capabilities: standards of respectability and decency are generally tied to prevailing social norms and expectations that are determined by the overall level of affluence in society. The social minimum as understood here may therefore vary from place to place (though it could not, for obvious reasons, fall below the subsistence minimum).[6] How would one practically go about determining the specific level that a social minimum requires in a particular social context? The obvious approach would be to analyse survey data about what the majority of citizens and permanent residents in that society consider necessary for being a fully respect-worthy member.

A social minimum might then be set at something like the mean or median expectation regarding necessary income for a decent standard of living. Alternative ways of

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[4] Prominent accounts of this approach come from capabilities' theorists such as Martha Nussbaum and Amartya Sen (Nussbaum 2000; Sen 1992). For an elaborate defence of a welfarist conception of a basic minimum, see: (Dorsey 2008, 2012)

[5] (White, S. 2010: 95ff.)

[6] See the discussion in (Ci 2013).

determining the social minimum in practice proceed from reference budget research, where representative sample populations are asked to identify specific abilities and functionings that are essential for a decent standard of living. One good example that combines elements of each can be found in the work of the UK's Joseph Rowntree Foundation's research into a minimum income standard (MIS), which develops a minimum budget for individuals and households based on focus group research regarding minimum functionings that one needs in Britain [7] One would hope, however, that different empirical assessments would lead to roughly similar results in terms of the basic financial necessities to enjoy a decent standard of living.

8.2.2 Conditionalities

Even amongst those favourably disposed to the idea of a social minimum, there is widespread disagreement about one important question: whether such a minimum should be supplied unconditionally to all members of the relevant social group, or whether eligibility should be conditional on, for example neediness or willingness to take up employment where available. Some of the arguments discussed in the philosophical literature aim to defend work requirements based on arguments from first principle.[8] Since my purpose here is to propose a policy that is compatible with a range of egalitarian arguments, I will not argue for either conditional or unconditional provision based on first order moral considerations. Rather, I aim to show that particular features of the current EU situation should caution against introducing cross-country means-testing and work conditionality requirements.

8.2.3 Funding a social minimum

A final question that defenders of a social minimum must answer is how such a policy should be funded. The most obvious answer in the case of a domestic social minimum regime is clearly some form of taxation. But there are different kinds of taxes and ways

[7] (Davis, Hirsch, Smith, Beckhelling, & Padley 2012). Very roughly, these two ways of determining the social minimum correspond to the EU's social survey indicators of 'at risk of poverty' (measured as 60% of the median national equivalized income) and 'material deprivation' (defined as a non-voluntary lack of at least 3 out of 9 capabilities to perform such things as 'consume protein-rich food', 'adequately cloth oneself and one's family' etc.). See (Eurostat 2010; Guio 2005b) and the discussion in chapter six.

[8] For the former, see e.g. (White, S. 2003), (van Donselaar 2009). For arguments against this position, see e.g. (Noguera 2007; Segall 2008; Van Parijs 1992, 1995)

of setting taxation levels, each with different overall distributive effects. If a reasonably comprehensive social minimum proposal must put forward some account of how a social minimum is to be financed, then it seems inevitably that it will need to provide reasons why its particular distributive implications should be accepted. Making this case will require political and philosophical arguments that extend beyond the argument that no person should fall below some minimum standard of living. It seems clear for that reason that any comprehensive account of a social minimum policy regime needs to be embedded in some larger conception of social justice. I assume here that this wider conception is the egalitarian one I have defended throughout this thesis. In other words, we should, where possible, seek to fund a social minimum policy regime with a view to realising a more equal overall distribution of income and wealth in the relevant social group, both for reasons of institutional fairness and for reasons stemming from the kinds of relations that can be sustained amongst members of the social group. In practice, this will mean that a social minimum is funded through progressive taxation (most obviously progressive taxation on income and wealth), though some more indirect form of taxation that has progressive implications, e.g. high indirect taxes on luxury goods and lifestyles that only the well-off entertain, might in certain cases be preferable for prudential and pragmatic reasons.

8.3 The EU minimum

So far I have only very briefly sketched the questions to which a concrete institutional account of a social minimum must provide answers. I now turn to the European social minimum that I wish to defend. By analogy to the more general discussion in the previous section, this EU social minimum consists in a bundle of resources that enables each EU citizen to live a minimally decent life as a member of this political and economic order, and an 'EU minimum policy regime' stipulates those policies and institutions that enable each EU citizen to gain reasonable access to the EU minimum. My aim here is to develop a policy proposal that is at the same time realistic and moves the economic institutions of the EU at least some way towards the achievement of the overall social democratic ideal. More precisely, I hope that the EU minimum and its constituting elements can be shown to meet two criteria: The first one is the condition

of feasibility. By this I mean that realising the proposal in actual public policy should be realistically possible in the medium to long-term perspective. The second condition is that of moral adequacy, i.e. we need to be sufficiently convinced that the proposal brings us significantly closer towards realising the full social democratic vision without creating inacceptable consequences along the way.

Clearly, this EU minimum policy regime will differ in several respects from more traditional domestic social minimum regimes. Here, I briefly discuss the most important differences and make some suggestions as to the practical organisation and level of adequacy at which such an EU minimum might realistically be set. An initial difference between a national social minimum and an EU minimum concerns the range of individuals who can demand access to such a scheme: a national social minimum can be claimed by citizens and permanent residents, whereas the EU minimum can be claimed by all EU citizens and permanent residents of any member state. A second difference concerns the institutional structure of the minimum's provision: whilst a domestic social minimum will obviously be set up by state institutions and will be financed through the raising of funds at a national level, the EU minimum would be implemented at the European level. This formulation leaves it open whether such a social minimum policy regime should be based on some supranational institutional arrangement or agency, or whether there should simply be EU-wide guidelines as to the minimum level of resource holdings that each EU citizen must be guaranteed by her domestic government. However, I will assume here that for a social minimum to be a genuine *EU minimum*, it would need to be funded in such a way that ex ante distribution between EU citizens living in separate member states are not excluded as a matter of principle: guaranteeing reasonable access to the scheme is a matter of at least shared responsibility between domestic and supranational levels of governance.

8.3.1 Who should be eligible for the EU minimum?

Putting aside these initial conceptual points about how to understand the idea of a EU minimum, we also need to answer two crucial, and, as it turns out, very difficult questions about its recipients. Specifically, we must answer whether (a) such a minimum

could or should be available only to those that meet some national or EU-wide level of objective need or should be paid to each EU citizens, and (b) whether the EU minimum should be conditional, and be offered only to those who are making a productive contribution or are willing to do so. Mainly based on pragmatic rather than normative considerations, I will argue that the EU minimum should be offered to each individual EU citizen and that it should be offered, at least for the moment, unconditionally. In other words, I want to suggest that in the particular context of the EU, i.e. its present economic situation and institutional make-up, there are important practical considerations that favour an unconditional and universal provision of the EU minimum.

8.3.1.1 Conditionality based on willingness to seek employment?

As I said in the previous section, some egalitarian thinkers believe that as a matter of moral principle, making a productive contribution to society is a condition for being eligible for a social minimum because an unconditional provision would permit the exploitation of those making productive contributions by those unwilling to do so. Here, I want to stay clear of these philosophical debates. My justification for doing so is the following: Even amongst those theorists who support conditionality in the provision of a social minimum, there is agreement that such a 'workfare' regime will be justifiable only if a number of basic requirements concerning the availability, quality, and range of meaningful options to contribute to society are in place.[9] So even for these writers, there are certain non-ideal conditions that might favour unconditional provision of a social minimum – for instance, when it is infeasible to provide particular individuals with meaningful opportunities to contribute to society. My pragmatic suggestion here is that once we think more specifically about the concrete non-ideal *EU case* and the opportunity to make meaningful contributions that is available there, even those *in principle* committed to conditionality requirements should conclude that the present lack of meaningful employment opportunities for all speaks in favour of relaxing or

[9] For example, Stuart White mentions the four requirements of income and participation adequacy and participation and contribution equity. See (White, S. 2003: 135-136).

even removing work conditionality under current economic conditions.[10] To see the force of this point, one only needs to think of present youth unemployment rates approaching 50% in places like Spain and Portugal.[11] Thus, the foundational question of conditionality may not be one that is actually relevant given the present economic situation in the EU. Beyond this intuitively plausible assumption, I do not discuss the issue of work conditionality in this chapter.

8.3.1.2 Conditionality based on Need?

A quite different question about eligibility is the one whether as a policy instrument, the social minimum should be provided only to those who would otherwise fall below the relevant EU- or nation-wide level of resource holdings, or whether it should be provided to each individual irrespective of actual level of neediness. Before we go into any details on this question, it is worth pointing out that this is primarily a practical rather than a morally principled question: Since the minimum will ultimately be funded through taxpayer contributions, it should always be possible to design the taxation side of the minimum policy proposal in such a way that those not falling below the minimum will fund their own benefits through their own contribution. Considering this aspect, I want to suggest here that there are crucial pragmatic considerations that favour introducing such a policy instrumental universally to each and every EU citizen.[12]

Economically, it is difficult to design conditional and means-tested social minimum schemes in such a way that they do not 'havoc incentives structures'[13] by discouraging economic activity amongst low wage earners. This phenomenon, widely known as the poverty or employment trap, occurs almost inevitably because means testing require cut-off points above which the benefit is no longer provided. This in turn makes it the

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[10] On White's interpretation of the justifiability of work-conditionality, that seems almost certainly to be the case: not only does he maintain that individuals need to be given meaningful and rewarding work opportunities, but his condition of 'contribution equity' seems to imply that where some able-bodied people are exempt from making productive contributions because society cannot offer them any such opportunities, *all* should be exempt because there would otherwise be inequity between those having to make such contributions and those who would not. (White, S. 2003: 136)

[11] See e.g. the evidence assembled in (Eurostat 2013b)

[12] Similar considerations were put forward by Yannick Vanderborght and Philippe van Parijs in response to a means-tested "Euro-Stipendium" proposed by Philippe Schmitter and Michael Bauer. See the contributions to the discussion in: (Matsaganis 2001; Schmitter & Bauer 2000, 2001; Van Parijs & Vanderborght 2001)

[13] (Van Parijs & Vanderborght 2001: 342)

case that two individuals may receive *identical* post tax and transfer incomes even though they earn different pre tax salaries. Effectively then, there will be a part of the better paid individual's salary that has a marginal tax rate of 100%, creating an incentive for the individual to simply accept the benefit and reduce her pre tax and transfer income. These disincentive effects of means-tested benefits schemes are not specific to the question of an EU minimum – they have been studied widely by economists and are often put forward as one of the strongest pragmatic arguments in favour of universal benefit schemes.[14]

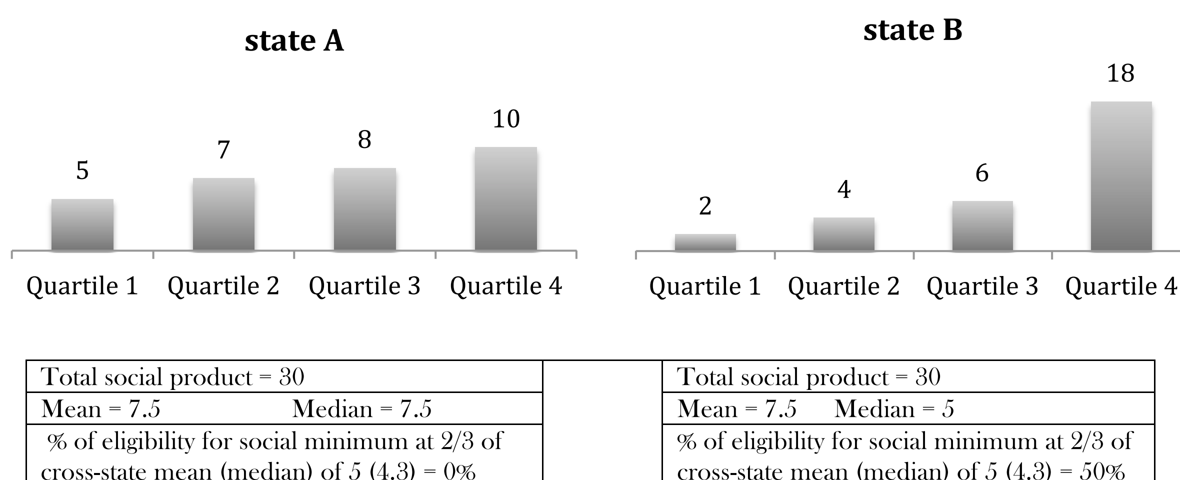
There are ways of mitigating these problematic individual-level incentive effects, but they would significantly complicate the structure of the benefit scheme. This puts into focus another argument against means-tested benefit schemes, namely that higher administrative costs are inevitably incurred through the requirement of ascertaining individuals' income level, neediness, compliance with work requirements, and so forth. Again, this is clearly a generic point that favours universal payment, but it seems that it has particular force in the EU context: even amongst EU enthusiasts, the idea of a European means-testing agency should be met with considerable reluctance. In the EU context, a means-tested, income-based social minimum would not only create significant administrative costs but would also be considered immensely intrusive from the perspective of member state citizens. As van Parijs points out, definitions of income often are integral parts of each state's welfare and benefits system, and an EU agency that applied some supranational standard would very plausibly be met with considerable resistance at the domestic level.[15]

Of course, there is the alternative that means-testing is undertaken by existing local and national welfare state institutions. But this would clearly not obviate the need to streamline national definitions of income etc. More importantly still, an income-based social minimum that is means-tested through domestic government agencies would create incentives on the part of each national administrator to *increase* the number of

[14] See the detailed analysis in (Van Parijs & Vanderborght 2005: 45-59, 64-80) which includes a discussion of negative income tax regime and different 'combined income' schemes.
[15] (Van Parijs 2012b: 8-9)

pre-transfer poor in order to funnel more supranational resources to its state and increase its share of cross-national benefits. A final argument against means-tested distribution of the EU-minimum is based on cross-country fairness: As it turns out (and can be seen in Table 2 below) a means-tested EU minimum would have the effect of actually rewarding states that fail to address domestic income inequalities of the kind that the social democratic ideal should condemn:

Table 1: Example of cross-national distributive effects under means-testing / income threshold minimum



Total social product = 30		Total social product = 30
Mean = 7.5 Median = 7.5		Mean = 7.5 Median = 5
% of eligibility for social minimum at 2/3 of cross-state mean (median) of 5 (4.3) = 0%		% of eligibility for social minimum at 2/3 of cross-state mean (median) of 5 (4.3) = 50%

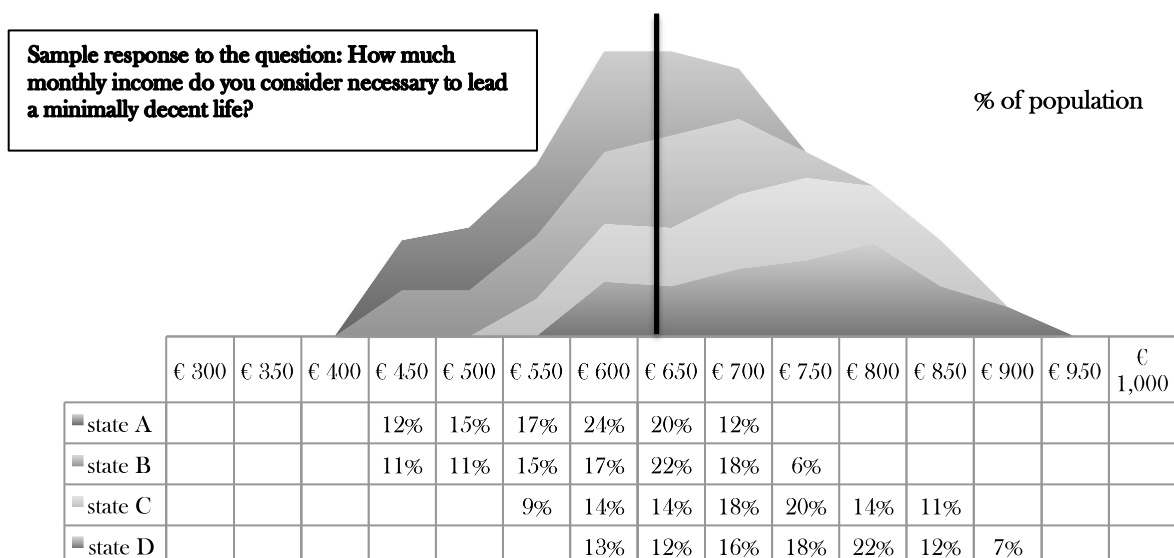
What the table above shows is that when we compare the effect of a cross-national social minimum between two states (for which we assume for the sake of simplicity equal population sizes of 20), a social minimum that is set conditional on some threshold, e.g. 2/3 of the cross-national median or mean income, in fact benefits the state that is more unequal domestically. In the example, state B which is markedly more unequal would receive total gross transfers of 20, whereas the more egalitarian state A would receive nothing because 0% of the population is below the poverty threshold. So unless the contributions to the poor would come entirely from the very rich top quartile of state B, this means-tested minimum regime would have an unequal distributive effect in the sense that of two states with *identical* aggregate social products, the more egalitarian one would subsidize the inegalitarian distributive outcomes of the other. So we should conclude that there are also reasons of moral adequacy that speak against a means-tested EU minimum.

8.3.2 At which level should the EU minimum be set?

We saw in the previous section that any social minimum regime must find some way of determining at what level of resource holdings or capabilities the social minimum should be set for the relevant social group, given the fact that some relative levels of affluence may be relevant. This point allows us to appreciate a further aspect that distinguishes a domestically set social minimum from an EU social minimum, and that makes it far more difficult to determine its concrete level of adequacy: One way of approaching the content of a domestic social minimum identifies such a social minimum's adequacy above the subsistence level by reference to the prevailing material requirements and expectations to achieve a decent standard of living in the context of the national political community. But how should the EU minimum be constructed? Two distinctive approaches can be imagined here.

A first approach to the question of where the EU minimum should be set suggests that the EU minimum should be European not only as a matter of institutional provision, but also in the sense that it guarantees a standard of living *that is considered decent by a majority of EU citizens*. I will call this the transnationalist approach to the EU minimum. If we adopt this first understanding, then the same resources, i.e. the same financial amount, subject to price level adjustments, would be offered to each and every EU citizen, regardless of local standards. An example of how such a strong EU minimum would be construed is shown in Table 3 below:

Table 2: Constructing a transnational EU social minimum (hypothetical example)



	€ 300	€ 350	€ 400	€ 450	€ 500	€ 550	€ 600	€ 650	€ 700	€ 750	€ 800	€ 850	€ 900	€ 950	€ 1,000
state A				12%	15%	17%	24%	20%	12%						
state B				11%	11%	15%	17%	22%	18%	6%					
state C						9%	14%	14%	18%	20%	14%	11%			
state D							13%	12%	16%	18%	22%	12%	7%		

This transnationalist approach to the EU minimum would evidently be very ambitious: Even if we adjusted for differences in local price levels, the minimum would lead to a very substantive financial redistribution from richer EU member states to poorer member states, and it would significantly – and sometimes dramatically– increase the overall income level in these poorer societies. Just consider the following example: If we applied the 60% of EU-wide median income poverty threshold as the relevant marker, the minimum would need to be set at €702 (PPP) per month.[16] Even adjusted for price levels, the actual pay-out would be higher than the median income in the six lowest income EU member states. In the poorest member state, Romania, it would effectively be 2.4x the price-adjusted median income. Whatever we would want to say about the moral adequacy of this transnational EU minimum, it should be obvious that introducing cross-national transfers of this amount belongs to the realm of political fiction for the foreseeable future.

[16] For reasons of simplicity, I use here the standard social policy definition of domestic poverty defined as 60% of the median income. A more complex approach, but one that would be more accurate in the light of the goal of respect-worthiness that the social minimum is meant to serve, would be to base all relevant figures on domestic minimal budget research. Unfortunately I have been unable to find such data for all EU member states. For an overview of the various reference budget standards that have been developed across the EU, see: http://www.referencebudgets.eu/budgets/.

By contrast, an alternative 'internationalist' approach takes the EU minimum simply as defined by the relevant local standards: the EU minimum is meant to guarantee each EU citizen a decent standard of living *wherever he or she lives*. Since the requirements of decency will vary from society to society, the level of the EU minimum will essentially vary in the light of local expectations and standards. The idea is then that the EU minimum is recognisably an *EU* minimum not in virtue of a common standard of living that is assumed to exist across European societies, but in virtue of how it is financed, namely (at least partly) through supranational –and therefore cross-nationally redistributive- funding. That this approach is less ambitious should be clear: Compared to the previous example where each and every EU citizen would receive the same resources, the internationalist EU minimum would be oriented towards the domestic poverty line in each member state. So for example, each person in Romania would then receive a mere €86 per month, whereas each Luxembourger could expect a pay-out close to €1,600 per month.[17] For obvious reasons, the cross-national distributive effect of this second approach would be much more limited.

8.3.2.1 Keeping feasibility in sight: Moderating the level of provision

Unfortunately, my conclusion here is that even this second, potentially more realistic approach, does not yield a practically feasible EU minimum: even a very rough calculation of the funding requirements of each suggests that both the transnationalist as well as the internationalist policy face severe feasibility constraints once we assume, as I have suggested above, that such an EU minimum should be paid *unconditionally* to each EU citizen in order to avoid the negative individual-level and country-level incentive effects that would arise if we introduced means-tests and poverty level eligibility. Consider the following: Introducing an EU minimum that guaranteed each EU citizen the current EU median equivalized purchasing-power adjusted poverty line income (the transnationalist proposal above), would require funds in the amount of approximately €4,450bn annually (500 million EU citizens x €8,912 = €4,507bn)[18], equalling roughly 34.5% of EU GDP. Even if we opted for the alternative

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[17] The calculation here is based on the 60% poverty line relative to domestic median income.
[18] €8,912 is 60% of the EU-wide median income (Eurostat 2013a).

internationalist conception of an EU minimum in which such a minimum is meant to lift every person out of domestic deprivation (and which is less striking in terms of cross-national distributive effect), the funds necessary would be enormous: If we again assume that local deprivation corresponds roughly to the 60% poverty line of the median domestic income, then approx. €4,459bn (34.5% of EU GDP) would be necessary for its funding.[19]

What these two very rough sample calculations indicate is that in order to be even remotely realistically feasible, only a much more modest level of the EU minimum is conceivable. Is there any particular level that we might choose on principled grounds, i.e. without simply insisting that the EU minimum should be as high as realistically feasible to approximate the transnationalist or internationalist conception? One approach that I find plausible would focus on the group of EU citizens that we might want to call the 'doubly disadvantaged' and insist that the EU minimum should be able to guarantee at least a decent standard of living to *this group*. By this term of the 'doubly disadvantaged', I mean to refer to those individuals that are by some objective standard the poorest in those EU member state societies that are themselves by some objective standard the poorest. The simple calculation here is the following: Current EU-wide median income is €14,854 (PPP) per year. Based on this figure, we can say that every EU citizen who earns less than €8,912 (PPP) falls below the *supranational* EU poverty threshold. If we look at EU member states median income statistics, we find that eight member states at present are so poor that even their median income is lower than this supranational EU poverty threshold (again this is corrected for PPP), namely Slovakia (€8,856), Poland (€8,212), Estonia (€7,500), Hungary (€7,017), Lithuania (€5,938), Bulgaria (€5,720), Latvia (€5,680), and Romania (€3,554).[20]

Now it seems obvious that people defined as poor relative to the median income in these states, that is, those EU citizens who make less (and indeed often significantly less)

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[19] These figures show that the overall funding need for each of these proposals would be comparable. (The reason for this, which some might find surprising, is that the internationalists proposal would do much more for the poorer individuals in richer EU member states). What clearly makes the first one less realistically feasible is the degree of redistribution that it would entail cross-nationally.

[20] (European Commission 2013e)

than 0.36x the EU-wide median equivalized income are disadvantaged on an EU-wide and on a country-level metric of income poverty. These individuals are then, according to both approaches identified above, clearly in the category of the worst-off members of EU citizens. The very simple thought here is that we set the EU minimum in such a way that it enables *at least* each member of this group to escape the domestic poverty level of their own society. What would this take? In the country with the highest median income that is below the supranational EU poverty line, Slovakia, the poverty line of 60% of the median income is €5,534 (PPP) per annum. On a monthly basis, this means €443 (PPP) per month. If we now remove the purchasing parity factor, the actual number is significantly reduced because living costs are generally lower in the poorer member states, leading to a figure very close to €300 per month. Since our aim here was to set an unconditional minimum that could realistically be realised but that at the same time guarantees at least those doubly worse-off EU citizens a decent minimum, this seems an intuitively reasonable figure.

How should we proceed with EU member states where the median income level is above the supranational EU poverty threshold? My suggestion is that we introduce the €300 per month limit as the upper payment level for the EU minimum, i.e. every EU citizen living in any member state with a median income level above that of Slovakia will receive the EU minimum of €300 per month. Since the €300 would be offered without purchasing-power adjustments, couldn't one immediately complain that this level of payment offers a bad deal to the income poor people in 'richer' EU member states? For example, an income poor person in Portugal (median income of PPP €9,584) could complain not only that the €300 per month do not lift her above the domestic or the EU-wide poverty line, but that the €300 she receives only buy her resources to the amount of €252 compared to the Slovakian recipient, once we adjust for relative price levels in Portugal.[21] Even though I think that her complaint has some merit, it seems to me that once we explain that in balancing EU-wide poverty and country-level poverty in determining a just level of an EU minimum, she could be persuaded if we point out the fact that Portugal as a whole has an aggregate income that permits each person to live

[21] (Eurostat 2013a: 27)

above the EU poverty-line, and that for this reason there is a case to be made that lifting this person above the poverty line should be seen as the responsibility of the domestic institutions of her own state. How about those countries where the median income is below that of the highest EU member state whose median income is below the supranational EU poverty rate? It seems to me that in respect of these countries, it is justifiable both for reasons of equity as well as prudential concerns to adjust the EU minimum downward to reflect relative price levels. A payment of €300 per month in the poorest EU member state, Romania, would in fact be twice the actual median national income! A universal payment at this level would inevitably lead to enormous distortions of the local economy. Thus, the EU minimum should be adjusted down in these states to reflect the lower relative requirements to finance a decent standard of living.[22]

This section has explained what the EU minimum is, in what ways it would need to differ from similar policy regimes within nation states, and how it could be realistically conceived given certain constraints on feasibility in the EU context. For mainly pragmatic reasons, namely to avoid individual-level poverty traps and country-level disincentives to reduce domestic poverty, the EU minimum should be paid to every EU citizen. Whilst any such scheme that would appear even remotely feasible given the current and foreseeable political realities in the EU would fall quite short of guaranteeing each EU citizen a level of decency (either by reference to the community in which he or she lives or by reference to some EU-wide level of adequacy), the more modest proposal for the EU minimum entertained here would be that it can act as a lower floor below which no domestic welfare state arrangement should be permitted to fall. If we set the EU minimum at €300 per month (subject to some adjustment for the lowest income and purchasing power level EU member states), it would function as a full basic income to members of the group of 'doubly-worst off' that I have defined as those individuals falling below the poverty threshold in EU member states in which the

[22] It would be a mistake, however, to lower the payment level of the EU minimum simply to the local poverty line of 60% of median Romanian income: current studies show that there is a significant number (roughly 15% of the population) that earn more than the 60% poverty threshold of median national income, yet are severely deprived on metrics that focus more directly on daily household items and functionings. See the discussion of this point and the general flaws in relative poverty definitions in Central and Eastern Europe in: (Fahey 2007)

median income is itself lower than the EU-wide poverty threshold. At least to these individuals, the EU minimum would effectively guarantee a minimum level of decency and absence of material deprivation. To all other EU citizens, the minimum would mean a partial guarantee of a minimally decent life defined by their respective national standards.

8.3.3 How should the EU minimum be funded?

Do these rough parameters (€300 per month unconditionally paid to every EU citizen, subject to downward purchasing power adjustments in member states with very low median income levels) provide a more realistically feasible proposal for the EU minimum? Depending on the downward adjustments in 'lower income' member states, the annual costs of introducing the EU minimum would be in the range of €1,700bn to €1,800bn (13-14% of EU GDP). Now of course, this is still a very tall number relative to the current overall EU budget that is set at 1.23% of EU GDP.[23] But my precise task here was to offer a policy proposal that is still within medium to long-term reach (even if it may not appear particularly realistic at the moment). However, one may still worry that nothing I have said so far shows that such a social minimum is anything more than a fanciful idea plugged from thin air because I have thus far completely ignored the question of how such a minimum would be funded. This section thus offers a preliminary sketch of the EU minimum's source of funding. Again, the two criteria in the light of which I will investigate different funding proposals are that of realistic feasibility and moral adequacy. How might the immense costs of the EU minimum be met? My first observation here is that if we think about different forms of taxation, there is no single individual measure that is even remotely realistically feasible to carry this immense burden: But this point by itself does not show that it cannot be done. In what follows, I show why the EU minimum might still be feasible if we consider a number of potential sources of funding.

[23] (European Commission 2013b: 47)

8.3.3.1 An EU Financial Transaction Tax

One very promising candidate to fund the EU minimum would be an EU-wide financial transaction or 'speculation' tax. Clearly, one reason for favouring such a tax is the fact that the EU is already actively pursuing the strategy of introducing such a tax in the immediate future amongst a subset of its member states, so a financial transaction tax cannot be dismissed as a utopian fantasy.[24] Moreover, a financial transaction tax, when properly designed, would meet the condition of moral adequacy since it targets activities that are generally undertaken by the more prosperous groups in society, and provides incentives against risky behaviour that may lead to financial crisis. In other words, funding the EU minimum through an EU-wide financial transaction tax would not only provide the means to realising this minimum. It would at the same time contribute to the social democratic vision by leading to more egalitarian societies and more overall economic equality amongst EU citizens.

There are very good reasons to believe that the emergence of a pan-European financial market (with unified regulation, capital mobility, elimination of exchange risks etc.) is a reason, if not the main reason, for the growth in size and profitability of the financial industry in Europe over the last two decades. Taxing away some of the profits that have resulted from creating this pan-European market in financial instruments and distributing these profits amongst those who have grown more vulnerable as a result of this market's existence seems entirely justified.[25] Finally, one could further substantiate the case of moral adequacy by pointing out that financial market regulation is one of those areas in which the EU plays a role that is increasingly as significant –if not more significant- than domestic institutions. At least for members of the Eurozone, the monetary infrastructure is to a very large extent sustained at the EU level. (Similarly, the EU is likely to play an even more dominant role in financial regulation in the near future, once current plans for a supranational 'banking union' have come into force).[26]

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[24] For an overview of the current policy proposal and its effects, see: (European Commission 2014)

[25] On the effects of capital liberalization and the distribution of risk, see: (James 2012 chapter 8)

[26] (European Commission 2013a)

The problem with a financial transaction tax is that its potential yield falls significantly short of the funding need of the EU minimum that I sketched above. The current EU plan foresees a tax of 0.1% of the market price of shares and bonds, and 0.01% of the notional amount underlying any financial derivative transaction where either market participant, facilitator, or the financial product bear a link to the EU's financial market.[27] The best estimate of the European commission for the revenues derived from such a tax are 0.5% of GDP of the participating EU member states.[28] If we assume that all EU member states would participate (an assumption that is quite optimistic for the foreseeable future given the open hostility of the present UK government towards the measure), the maximum funds resulting from this tax would amount to only €65bn per year. Of course, one could attempt to raise the very low level of taxation to something higher than 0.1% (0.01% for derivatives), but most economists anticipate that there is little hope of raising the overall amount of tax income because of the significant elasticity in the tax base.[29] Thus, the overall contribution that a financial transaction tax could make to the EU minimum would be small: something in the range of €10 per EU citizen per month.[30]

8.3.3.2 Corporate Tax and formula apportioning in the EU

Next in line in terms of proposals that match the two criteria of feasibility and moral adequacy would be a form of EU corporate taxation. As we saw in chapter seven, one of the crucial problems that conditions of complex economic interdependence raise is the issue of tax competition amongst states, in particular in the area of corporate income. It seems very intuitive then to take as one source of funding for the EU minimum a corporate tax that at the same time helps to mitigate the effects of harmful tax competition. What would such a tax look like? The European Union and other international bodies –most notably the OECD[31]- have in fact worked for several years on different proposals for tax harmonization. One suggestion that has been widely

[27] (European Commission 2014)
[28] (European Commission 2014)
[29] (European Commission 2013d)
[30] A similar conclusion is drawn in (Van Parijs 2012b: 10). Van Parijs also presents a similar conclusion in relation to a further possible tax on emissions which I do not discuss here.
[31] (OECD 1998, 2004, 2010)

discussed and endorsed by various influential NGOs (perhaps most importantly the Tax Justice Network[32]), is the idea of a common consolidated EU-wide corporate tax base with formula apportionment. The idea is the following: Whereas the current transnational system of corporate taxation permits transnational companies to have foreign subsidiaries taxed in different states, and thereby offers these companies the ability to transfer its profits to the jurisdiction with the lowest corporate tax rate through the means of company-internal profit shifting[33], a consolidated tax base would require international companies to file a single tax report for all its profits and those of its subsidiaries in the various jurisdictions in which it does business. The corporate tax is then calculated for the entire business or conglomerate, such that the possibility of 'tax optimisation' through profit shifting is no longer available.[34]

How much could we expect an EU corporate tax to yield per year? At present, corporate tax stands at an EU average of 23.1% on corporate profit, and it accounts for roughly 6.4% of the overall tax revenues across EU member states.[35] Even relatively conservative estimates assume that replacing the current structure of corporate taxation by the above-mentioned mechanism of a unified tax base with formula apportionment would immediately increase the tax revenues in this area by 10-15% due to reduced leakage, and would thus increase the overall amount of tax revenues by 1.4%.[36] If we now assume the current overall tax revenues in the EU and apply these figures, we see that the total amount of corporate income tax is €348bn, amounting to a social minimum of approximately €60 per month. One further reasonable proposal in the area of corporate tax would be to reverse some of the (partly tax competition induced) declines in corporate tax rates that EU member states have experienced over the last fifteen years: Between 1995 and 2011, the weighted average corporate tax rate in the EU has declined by over one third, from then 35.3% to the now 23.1% mentioned above.[37] If we gradually reversed this decline, e.g. by 60% (leading to a corporate tax rate

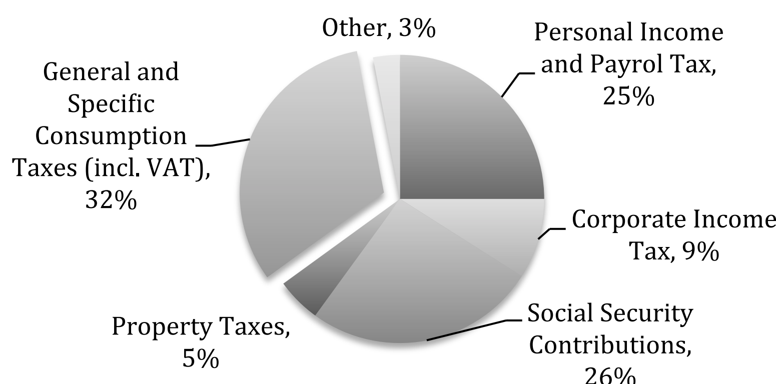
[32] (Picciotto 2012)
[33] See the more detailed discussion in section 7.4.
[34] See the discussion in (Rixen 2011) and (McIntyre 2012; Oestreicher, Spengel, & Koch 2011)
[35] (Eurostat 2013c: 30)
[36] (Picciotto 2012: 11)
[37] (Eurostat 2012 Table A.2.2_G)

of 30% which would still be below the current OECD GDP-weighted average of 32.5%[38]), then the tax yield would increase to €420bn, or a monthly EU minimum of €70. Although this is clearly a more significant contribution to the level of €300 I have suggested than the financial transaction tax, it still falls short by a significant measure: put together, the two proposals discussed so far amount to less than one third of the overall funding requirements of the EU minimum.

8.3.3.3 (Further) Europeanizing Value-Added Tax (VAT)

My final proposal for the funding of the EU minimum relates to what may be seen already today as the most 'Europeanized' tax of the domestic revenue mix, namely indirect value-added tax (VAT). In most European countries, VAT, together with personal income taxation, is presently the largest contributing element to domestic budgets:

Table 3: Average Member State Tax Revenue Mix in the European Union[39]



For obvious reasons relating to the functioning of the internal market in goods and services, the EU has sought (with some success) to harmonize domestic VAT regimes across the EU. More importantly even, the EU's present budget is partly based on an element of VAT that is directly transferred from the tax-collecting member states to the EU. This current level of VAT transfers to the EU's budget is quite limited, fixed at 0.3% of the harmonized VAT base (I set aside here some special privileges to a number

[38] (OECD 2011: 118)
[39] (Eurostat 2013c)

of EU member states).[40] The general idea would then be that the existing member state VAT transfers to the supranational level are ramped up to complete the shortfall that remains after a unified EU-wide corporate tax regime and an EU-wide financial transaction tax have been put into place. What level of increase would this imply? According to some preliminary calculations by Philippe van Parijs (who does not take into consideration incentive effects that a genuine tax model, e.g. EUROMOD would need to include), an increase in the EU's harmonized VAT tax base by 1% would result in an increase of EU tax revenues of €60bn.[41] An increased VAT transfer rate at 20% would yield €1,200bn and would therefore be sufficient to cover the remaining shortfall to finance the EU minimum.

Of course, this rough-and-ready calculation does not yet say anything about the proposal's feasibility or its moral adequacy. If we start with the former, one might initially feel that there is no prospect whatsoever of realising this particular proposal: after all, which state would be willing to increase VAT by 20%? Any such tax hike seems the perfect recipe for destroying an economy. Luckily, the proposal entertained here requires no such thing: The increased transfer rate must be seen in conjunction with the budget-freeing effect that each member state would experience if the bottom element of the social expenditure budget would be financed through a supranational mechanism: Just to give one example, a €300 monthly EU minimum would free the German social expenditure budget of €289bn per year, which amounts to over 40% of the social expenditure spending by the German federal state.[42] Why is this relevant? For the simple reason that these savings on the expenditure side could be used to reduce the *national* VAT component. Once we factor in the overall revenues/expenditure effects, the increased VAT transfer rate looks much less dramatic:[43] the average VAT rate across the EU is 22%, which on average amounts to 7.7% of domestic GDP.[44] By contrast, social expenditure, which could partly be deducted from the domestic budget

[40] (European Commission 2013b)
[41] (Van Parijs 2012b: 13)
[42] (European Commission 2013e: 43)
[43] See the discussion of this point in (Van Parijs 2012b: 13-14)
[44] (Eurostat 2012 Table A.1.1_G)

because of the EU minimum amounts to 25% of GDP on average.[45] So in most states, the domestic budget-freeing effect of the EU minimum should allow for reducing the domestic VAT component. Once this feasibility issue is clarified, it also becomes clear that the VAT proposal does not carry the morally questionable effects that large increases in indirect taxes on consumption goods would have, to wit, that they have de facto regressive distributive effects because less affluent households spend proportionally more on consumer staples.

This section has obviously not been able to offer a detailed blueprint for how the EU minimum could be financed. But what I hope to have shown is that there are several promising options that –if combined- could make the EU minimum a reality. Moreover, I hope to have demonstrated that the introduction of certain EU-wide tax elements, in particular a financial transaction tax and a common consolidated corporate tax, have an imminent plausibility and seem highly morally adequate in their own right for all those accepting the social democratic perspective. Of course, each of these options would need to be investigated in much more detail and with economic expertise. But nonetheless, I think that there is a sound basis not only for the expenditure side of the EU minimum, but also for its EU-wide funding.

8.4 Justifying the EU minimum: Transnational Arguments

8.4.1 Direct transnationalist arguments and basic minimum

In this and the following section, I explain why the different perspectives on social justice in the EU may each agree on a social policy regime that guarantees the EU minimum to each EU citizen, starting with the direct transnationalist case. Would the idea of an EU minimum find support amongst those who insist that more egalitarian supranational economic institutions are necessary amongst EU citizens because (a) they cooperate in the mutual provision of essential social goods or (b) because the EU acts as a fiduciary agent of public power? It seems to me that the answer in respect of both

[45] (European Commission 2013e: 9)

(a) and (b) is affirmative. Let us consider these in turn, starting with theorists focusing on fair reciprocity in the production of a regime of market regulation and property at the EU level.

Even before moving to the specific case of the EU, we should find some support for the idea of a social minimum in existing philosophical discussions of Rawls' idea of fair reciprocity. In fact, some theorists have argued that Rawls's own analysis of fair reciprocity amongst co-citizens may be interpreted as offering equal support for an economic distributive principle like 'social minimum + efficiency' rather than the more demanding difference principle.[46] But even without going as far as suggesting that a social minimum is a more obvious implication of the Rawlsian concern with fair reciprocity, we can see that the introduction of such a social minimum goes at least some way towards ensuring that the requirements of fair reciprocity in the production of social goods is met. The difference principle is one specification of how the basic institutions that are jointly created and upheld through social cooperation –in particular the system of property holdings- can be rendered acceptable to the worst-off members living under them. Now if we compare a political and economic arrangement that lets market-generated inequalities in income and wealth occur without guaranteeing a basic social minimum to its worst-off members with one that at least secures the worst-off members' basic requirements, it should be obvious that the latter is more acceptable from the perspective of these individuals and therefore presents a better approximation of a social and political order governed by the ideal of fair reciprocity.[47]

As we saw in chapter four, the EU presents a particularly complex and challenging case for the application of the fair reciprocity approach because the social good of a system of secure property holdings is the result of cooperative interaction at different levels, most notably the level of EU member states and the supranational EU level of legislation and regulation. When faced with such an overlapping arrangement of social goods production, the best application of the principle of fair reciprocity requires that

[46] See e.g. the discussion of this point in (Waldron 1986; 2011: 796-797).

[47] One detailed account of why fair reciprocity requires such a civic minimum in the case of domestic social institutions is presented in (White, S. 2003)

we create an institutional setup that robustly distributes those aspects of the social benefits that are created and sustained as a result of cooperation in a manner that is most acceptable to those EU citizens who fare worst: this is the adequate way of offering them a fair return for their submission to these supranational aspects of the property regime.

But can such an approach ground a social minimum at the EU level i.e. would this minimum present a good proxy for the demands of fair reciprocity amongst EU citizens? My suggestion was that one major challenge in such an overlapping arrangement is to ascertain the relative significance of supranational and domestic institutions. In the face of this difficulty, it seems to me that those thinking about adequate measures in institutional design will need to consider the relevant alternative feasible arrangements and choose the one that is most likely to offer fair terms of cooperation to all. My tentative suggestion here is that under these conditions of uncertainty, the EU minimum presents the best feasible institutional proposal for the following reason: First, any actual institutional arrangement that would offer those worst off conditions that are *inferior* to those that they would receive as a matter of fair reciprocity if we could ascertain all the relevant facts is clearly much worse than an actual institutional arrangement that would offer the worst off *superior* conditions than those that they would receive if we knew the real level of contribution of the EU level.

So even if the EU minimum runs the risk of over-compensating those EU citizens presently worst off because domestic institutional arrangements might turn out to play a more consequential part in the production of a secure system of property rights (and hence fair reciprocity demands that the worst off EU citizens be given a smaller compensation that what the EU minimum suggests), it does minimize the far worse risk of injustice through harmful under-compensation at the supranational level. On the other hand however, the EU minimum clearly recognises that the higher level of mutual dependence and joint provision of essential social goods that exists amongst co-citizens warrants the application of more demanding principles of fair reciprocity amongst co-citizens: the EU minimum guarantees a basic level of sufficiency to the worst of EU

citizens, but it does not require fully egalitarian principles in the form of a straightforward application of the difference principle to the EU as a whole.

It seems to me that something similar can be argued in relation to the fiduciary argument for equal benefits that we encountered in chapters four and five. We saw there that EU institutions claim public power over EU citizens, especially in the domain of economic activity, including the determination of property rights and the like. In the comprehensive domain of the nation state, it was argued that the claim to public power and its exercise yield comprehensively egalitarian requirements. However, we also encountered the thought that the EU's institutions and regulations, whilst claiming public power over individuals in some areas of economic activity, do so less comprehensively than the state. It seems that again one plausible way of balancing the force of these two insights is to insist that EU institutions do owe equal concern to each EU citizen, but contrary to the domestic situation, this requirement provides slightly less support to the very demanding implications of the difference principle, but rather supports a regime of a sufficiently high social minimum.

One final point that I want to make in relation to the direct transnational arguments and their relation to the EU minimum is the following: One reason to think that purely cooperative or reciprocity-based approaches to social justice fail to offer us a complete picture of the requirements of social justice is that they need to rely on some account of the entitlements to external resources that are necessary to provide the public goods that give rise to requirements of fair reciprocity amongst co-operators. Now one justification for a social minimum that may turn out to be compatible with egalitarian reciprocity theories would be that such a universally paid minimum is in fact a kind of dividend or compensation paid to everybody for the use of those external resources that are necessary to sustain a basic institutional arrangement.

8.4.2 Indirect transnationalist arguments

To understand why an EU minimum -even in the more limited form proposed that pays attention to constraints of feasibility- should be endorsed by those moved by indirect transnational arguments, let us briefly recall the structure of these indirect transnational arguments: Over and above the promotion of institutional fairness, the economic structure of a social and political order should create conditions that enable subjects to relate to each other as equals in the context of their relationship as EU citizens. Relating to each other as equals requires (at least) the eradication of two kinds of inequalities, namely inequalities in power over the relationship, and inequalities of recognition. How would the implementation of the EU minimum mitigate the existence of these forms of social inequality?

Turning first to the recognitional elements of relational equality, I suggested in chapters two and six that we should distinguish between two elements within this category, namely the idea of basic standing (status) and complex equality (esteem). Basic standing indicates that an individual is considered to have the requisite features and qualities to participate as a member in full standing in the public life of the relevant group, i.e. to be a respectable person whose claims are considered relevant in public deliberations. Basic standing generally requires people to have those resources necessary to conform to prevailing social norms regarding clothing, public appearance, and other publically identifiable aspects of one's lifestyle. One obvious point about the EU minimum is that it will guarantee this level of basic standing in the domestic context to at least those persons whom I have defined as the group of the 'doubly worse off' in the EU: the EU minimum will guarantee a life above the *national* poverty threshold in the eight poorest EU member states by introducing a social minimum of €300 per month (subject to purchasing power adjustments in the poorest member states) which is sufficient to live above the 60% of the median income threshold.[48]

[48] For the sake of simplicity, I simply assume here that the domestic poverty threshold approximates the local standards of respectability to achieve basic standing. Obviously, a more detailed treatment would need to relate these income levels to the relevant local reference budgets.

What will be its effect on poor individuals in EU member states whose median income is not below the EU-wide poverty line? As we saw, the EU minimum in these member states will not be sufficient to guarantee a standard of living above the local poverty threshold, so we cannot claim that the EU minimum does have the obvious advantage there that it has in the poorest member states. But I think nonetheless that we can show that introducing it in these member states does significantly advance the cause of domestic and EU-wide social equality. A first point is that the particular kind of proposal that I have advanced, namely a universal and unconditional EU minimum will to some extent remove one aspect of the current welfare state that many consider conducive to inegalitarian relationships, namely different forms of means-testing.

From the perspective of social equality, the unconditional provision of the EU minimum is not merely an aspect that greatly facilitates its administration, but it is indeed a crucial aspect because it obviates in some respect institutional judgements about social needs, responsibility and so forth, which may themselves damage the self-respect of the worst off. Admittedly, this effect will only fully bear fruit where the unconditional element is sufficiently high to permit individuals to live a decent life. In the richer member states where this will not be the case, the EU minimum will act merely as an unconditional element underpinning local welfare state regimes, which we should expect to continue to contain elements of means-testing. But even in these cases, it seems plausible to me that the knowledge that one significant element of the overall social support that one receives does not rely on institutional judgements about need, desert and responsibility alleviates to some extent the harm of 'shameful revelations' etc.

The second element on the subjective or recognitional side of social equality concerned the idea of complex equality. Here, the point was that social equality amongst individuals cannot obtain if some group can be identified as outperforming all others across different spheres of social esteem. The connection between the EU minimum and complex equality are not quite as obvious as they are in the case of basic standing. However, I think that the indirect effects that the EU minimum would have will contribute to complex equality in at least one respect: One threat to complex equality

that I described was the threat of pre-eminence, i.e. the social phenomenon whereby one particular sphere of social life becomes the all-important marker of relative assessments of esteem. The most likely form of pre-eminence in contemporary capitalist societies arises where a person's ranking in terms of esteem is largely or solely based on economic success and income.[49] An unconditional social minimum, whether targeted at the domestic or EU-wide level, may also contribute to the upholding of this aspect of social equality by countering, at least in some respects, the threat of pre-eminence: if people receive a social minimum it will elevate the status of non-monetary forms of achievement and protect these from the pre-eminence of the sphere of money.[50] Again, it is true that this effect will be most pronounced when the minimum is sufficiently high to severe the link between poverty and the requirement to seek employment. But even where an unconditionally paid minimum falls short of enabling people to live a decent life without employment, the fact that there is a significant element in one's income that is unrelated to how one fares in market contexts should to some degree increase each individual's ability to seek non-market forms of achievement. For example, even if the EU minimum contributes only 35% towards what is necessary to be a respectable member in one of the richer EU member states, it should still make more accessible to each person the choice of reducing her working hours and spending more time on non-market forms of social recognition.[51]

So far, I have focused on the issue of basic standing and social equality in the domestic context. But the introduction of the EU minimum, it seems to me, would also supplement transnational relationships of equality amongst EU citizens. The thought here is the following: Although current EU treaties and institutions have introduced the concept of EU citizenship (see my discussion in chapter six), they have so far entirely failed to supplement the components of 'EU economic citizenship' (the four freedoms etc.) and 'EU political citizenship' (the right to participate in EU elections, appeal to EU institutions etc.) with anything even approximating EU social citizenship. Of course, the

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[49] See the discussion of the threat of consumerism in section 2.5.3.

[50] (McKinnon 2003: 147ff.)

[51] Ingrid Robeyns discusses this point in relation to the effect that a (domestic) social minimum would have on women in currently prevailing social and economic conditions. (Robeyns 2007: 112ff.)

idea of the EU minimum that I have described here falls dramatically short of the thicker versions of social citizenship domestically. Nonetheless, the EU minimum provides at least a hint towards some form of EU social citizenship by institutionalising the idea that no single person in the political and economic order that the EU constitutes should fall below a minimum level of resource holdings. As Schmitter and Bauer argue in relation to their proposal for a 'Euro stipendium', one of its primary objectives is "to embody the EU's commitment to social citizenship with a policy that is 'European' in scope and substance, and 'transparent' and 'simple' to administer."[52]

B. The EU minimum and equal power over political institutions

So far, I have investigated how the introduction of the EU minimum would advance the ideal of social equality amongst national co-citizens and EU citizens in respect of the recognitional elements of basic standing and complex equality. But this leaves open the question whether such a policy proposal could in any way advance the existence of the second necessary element of social equality, namely equal power over common institutions and political processes. It is less obvious how the social minimum could address inequalities of power over common EU institutions: these inequalities generally exist between the very rich and the majority, so a social minimum is unlikely to address this issue. But we should not forget that the social minimum policy regime that I have proposed consists both of a benefit and a funding side, and it should at least be the case that some of the EU-wide taxation elements will make a contribution towards equalizing political power within and across member states. Just consider the financial transaction tax: Since financial speculation on which such a tax would be levied are almost exclusively the purview of the well off, the social minimum may support social equality further by reducing (by some degree) power differentials between the average EU citizen and the very rich. The same should be true for the second proposal I made, namely an EU corporate income tax: First of all, taxing company profits comes pretty close to directly taxing rich individuals. Secondly, and perhaps equally importantly, we saw in chapter seven that one questionable form of tax optimisation in which wealthy individuals have increasingly indulged in recent years is arbitrage through self-

[52] (Schmitter & Bauer 2000: 56)

incorporation, which was possible because states have lowered corporate taxes below the top personal income tax rate for reasons of international tax competition. Since the proposal for a unitary corporate tax would effectively take some of the intra-European competitive pressure off the corporate tax regime, it could be brought again more in line with the higher income taxes, thus again decreasing the threat of financial preponderance translating into dominant influence over European and domestic institutions.

8.5 Why solidarist internationalists should endorse the EU minimum

Offhand, it seems less clear why those subscribing to solidarist internationalism should accept the idea of an *individual-centred* social minimum at the EU level. But I think that once we weigh the 'negative' consequences of cross-national transfers with the positive consequences that such a minimum would have for each state's ability to be fundamentally protected against foreign domination whilst keeping the possibility of implementing a generous and egalitarian domestic welfare regime, solidarist internationalists should accept the proposal. The general structure of the internationalist argument I presented in chapter seven was the following: in the face of dramatic global changes in economic production, strong welfare states increasingly face pressure from beyond their borders to adjust social democratic welfare state arrangements to compete in a globalised marketplace. The most promising avenue to embrace economic and technological change of this magnitude whilst upholding current welfare state provisions is to create a supranational authority that coordinates their policies. Since solidarist internationalism claims that it is in fact valuable if *all* states are domestically organised in accordance with the social democratic ideal, there are strong reasons to progressively include into their supranational institutions states whose present institutional outlook is not (yet) in line with domestic egalitarian requirements.

However, this inclusive strategy further exacerbates an imminent danger, namely that economic integration itself furthers the threat of downward pressure on domestic welfare state policies. What strategy should be pursued to ensure that inclusive supranational institutions do not themselves undermine the purpose for which they

have been created? The point I argue here is that adding a limited social dimension to these supranational institutions in the form of an EU minimum policy is the most plausible public policy strategy for solidarist internationalists. To argue this case, I distinguish between considerations that demonstrate why the EU minimum fundamentally serves the purpose of solidarist internationalism, and, on the other hand, considerations that show why such an interpersonal transfer scheme does not ultimately threaten collective self-determination of each EU member state.

8.5.1 How the EU minimum would serve solidarist internationalism

Two threats to the realisation of the solidarist domestic vision that I presented in the previous chapter were tax competition and pressure on labour standards and a decrease in bargaining power of labour relative to capital. Here I want to suggest that the EU minimum would help to prevent these welfare-state-undermining phenomena, or at least reduce the risk of their occurrence. If my argument is convincing, then there is at least a positive case for the EU minimum from the solidarist standpoint.

8.5.1.1 Labour markets, automatic stabilizers, and the EU minimum

In discussing why the EU needs a 'social dimension', Frank Vandenbroucke presents three recognisably internationalist arguments, which he labels the 'safeguard against social dumping' argument, the 'protective barrier around national social sovereignty' argument, and the 'inevitability of European monetary union' argument respectively.[53] Vandenbroucke's first argument is essentially that adding a social component to the current regime of market freedoms at the EU level will lessen the threat of 'social dumping' and other forms of welfare state competition that we discussed in the previous chapter. How so? Two consequences of introducing an EU minimum can be distinguished here. As we saw in section 7.5, one important element in the shift of bargaining power from labour to capital over recent decades had to do with capital's ability to credibly threaten to move processes of production abroad to places with lower labour standards and production costs. This threat of relocation is most credible in the

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[53] (Vandenbroucke 2011: 7-11; 2013)

area of economic activity that is manual labour intensive and requires comparatively lower skillsets and human capital. Now one consequence of the EU minimum in low-income member states, i.e. in those states to which moving is most plausible, is that it will strengthen the position of low skilled workers vis-à-vis employers: contrary to existing social protection mechanisms in these states, the EU minimum will effectively guarantee these individuals a life above the poverty-line.

A second potential risk to existing welfare state arrangements that I discussed was the threat of 'social dumping' through the sending of 'posted workers' from low cost labour states to high cost labour states. In relation to this phenomenon, the introduction of the EU minimum will have a similar effect to the one just described: the Romanian worker who receives a PPP-adjusted social minimum in Romania is less likely (ceteris paribus) to temporarily migrate to Sweden and undermine Swedish labour regulations by offering services for below-local prices. In pointing out these effects of the EU minimum on the pan-European labour market, I do not mean to deny here that an effective protection of the social democratic welfare state will not also require additional measures, most notably a harmonization of working standards and minimum wage regimes. But at least in respect of the latter, the EU minimum does in fact present a relatively simple way of indirectly introducing minimum wage regimes: after all, what the EU minimum does is increase the reserve price of cheap labour.

European Monetary Union and the labour market.[54] Over the last 100 years, European welfare states have developed an elaborate set of institutions and mechanisms to counteract or fairly distribute a number of risks inherent to capitalist economic systems. One such important mechanism is that of 'automatic stabilisation': The inherently cyclical nature of capitalist development leads to economic crises and recession in which corporate profits decline, wages stagnate or decrease and unemployment rises, which in turn dampens demand and leads to further deterioration in economic growth.

[54] This thesis included a detailed treatment in a separate chapter of the normative issues raised by monetary union which, for reasons of space, does not form part of this final submission. In this chapter, I showed in some detail why even solidarist internationalists should in principle be committed to supranational monetary authority under currently prevailing conditions of global capital mobility (Viehoff unpublished). Here, I simply assume that monetary union is something that solidarists can endorse, and I show why the existence of the Eurozone further supports the EU minimum.

In such situations, social benefits and unemployment protection have a stabilizing function because they break this downward spiral by guaranteeing income to workers/consumers. But since government revenues are declining at the same time as government spending is increasing (because tax income is decreasing and social expenditure is rising), the effect of automatic stabilization depends on the government's ability to either increase debt or 'create money' through central bank activities.[55]

This fact takes on a special significance once we consider the actual current situation in the EU where 17 member states are not merely deeply connected to each other by way of economic interaction, but have also adopted a shared monetary arrangement since European Monetary Union (EMU). As Paul de Grauwe has argued, a serious design flaw of the Eurozone has been that this essential ability to act as an automatic stabilizer has to some extent been taken away from domestic government without the creation of an adequate replacement at the supranational level: states are restricted from increasing debt levels, whilst also having no individual control over central bank policies. This restriction is further worsened by the fact that one additional strategy of breaking this 'bad equilibrium' domestically is unavailable under conditions of monetary union, namely the possibility of boosting domestic production (and discouraging imports) by increasing external demand via currency devaluations. Given these rigidities, there are essentially three conditions that can make monetary union between separate economic areas viable, namely (a) internal devaluation, that is, increases in competitiveness through increases of productivity (mainly by means of wage reductions), (b) increases in inter-regional labour mobility, or (c) inter-regional transfers.[56]

Why is this relevant for whether or not solidarist internationalists should support a EU minimum? The obvious point here is that so long as option (a) is excluded because it fundamentally undermines those values that the solidarist cherishes domestically (fair wages, social security, strong unions etc.) and option (b) is essentially unavailable in the EU context –and one might add, is equally unattractive for those wanting to protect

[55] (De Grauwe 2013; Grauwe 2012)

[56] (Van Parijs 2012b: 2-3) See the more detailed discussion in (Grauwe 2012: chapter 4 and 5) and (Krugman 2012: chapter 10).

national integrity and collective self-determination of the political community- the only remaining possibility in the face of monetary union is the introduction of some cross-regional transfer mechanism. Being a simple and non-intrusive way of realising such a stabilizing transfer mechanism, the EU minimum should thus appeal to solidarist internationalists. Thus, the cross-national redistribution implied by the EU minimum that is funded through taxation will act as an automatic stabilizer against economic shocks that hit individual Eurozone member states: if state A is negatively affected by an asymmetric economic shock, the net transfers from other states will increase because tax revenues from corporate profits and VAT will decline whilst the minimum payments remain stable.

8.5.1.3 Tax competition and funding the EU minimum

I already mentioned the issue of tax competition as one of the core risks that the globalisation of economic production has created for the kinds of welfare states that solidarists favour. Whilst the benefit distribution side of the EU minimum does not address this issue, there is much more to the thought that the introduction of some supranational tax mechanisms will alleviate the problem of harmful competition and protect domestic welfare states. The two more direct tax proposals I suggested, i.e. the EU-wide financial transaction tax and the common consolidated corporate tax, are in fact taxes on those taxable agents most likely to exacerbate harmful competition because they are much more mobile than the relevant tax base for, say income taxes and especially indirect taxes like VAT. As I argued in section 7.4, corporate profits are by far the revenue element most prone to create adverse incentive effects between states.

8.5.2 Why the EU minimum is compatible with collective autonomy

I want to end this discussion by presenting the case why the EU minimum is compatible with solidarist internationalism despite its cross-national and interpersonal transfer elements. The point here is the following: EU member states have historically developed quit distinct welfare state arrangements, including very diverse and often incompatible provisions to ensure at least some domestic advancement towards the

social democratic vision. In this light, individual welfare state models must be counted as immensely valuable contribution to realising the core values that have guided this thesis, and we should therefore be very hesitant to propose EU-wide social justice policies and institutions that will upset or undermine the functioning of these existing welfare state arrangements. This, precisely, is the core insight of the solidarist internationalist position. For this reason, we should try to opt for those EU-wide proposals that promise to be compatible with, and supportive of, the existing social democratic design at the national level.

In one respect, choosing a minimally upsetting supranational institutional design for the realisation of EU social justice is simply a demand of prudence and feasibility: Since EU member states and their citizens attach great value to existing welfare state arrangements (often in the form of unproblematic national pride in 'their' national health service, 'their' old age pension system, and so forth), any proposal at the EU-level that would replace or fundamentally alter these arrangements would stand little chance of ever being implemented. But solidarist internationalists will also want to claim, rightly I think, that these existing institutions do have some important independent value because they express a political community's joint struggle to overcome –at least amongst themselves- injustice and unjustified class privilege.[57]

How does the EU minimum regime relate to these points about feasibility and the value of domestic welfare state arrangements? The EU minimum, at least in the unconditional and universal form for which I have opted, presents a very simple way of guaranteeing a form of fairness and basic individual protection at the EU level. As such, it is relatively non-intrusive as far as the structure of existing European welfare policies at the national level is concerned. In fact, the EU minimum will be least invasive in the existing domestic regimes that already conform domestically to the social democratic vision, and it will be most intrusive where little advancement in this direction has been achieved, for it may simply be taken as a basic element of the existing welfare regime which can replace a part of the social benefit payments for those presently receiving

[57] For a similar point, see (Van Parijs 2004; 2012a: 8)

them, and it can replace tax free income credits for those presently in employment. For example, the various tax exemptions in Germany add up today to roughly €10,000 non-taxable income on employment per year, so if we introduced the EU minimum and simply terminated these tax breaks, they would nearly cancel each other out (€10,000 x 33% marginal tax rate = €275 per month). Thus, the EU minimum simply acts as a floor against which other forms of welfare provisions can be adjusted.[58] It is this simple structure that makes it possible to simply add the EU minimum to the existing welfare states arrangements without requiring drastic revisions to long-standing national traditions on matters such as the definition and eligibility of pension benefits, income, employer healthcare contributions, and so forth. This being the case, the EU minimum does not endanger the ideal of a more egalitarian domestic scheme of social distribution.

8.6 Conclusion

Brian Barry, in discussing the idea of a domestic unconditional basic income (an idea, to which he was initially quite unfavourably disposed, though he later changed his mind on pragmatic grounds), said the following:

> "The profoundest socialist thinkers have recognised that social equality is not only a matter of limited disparities in income but also turns on giving each person the dignity that comes from independence. Dependency – the dependency of a worker on an employer or a woman on a man- has rightly been seen as the enemy to be overcome. I do not think it too fanciful to claim that those who learned their socialism from William Morris and R. H. Tawney may recognise the introduction of a subsistence-level basic income as a practical way of achieving some of their central aims."[59]

[58] See the more detailed discussion of this point in: (Van Parijs 2012b: 13)
[59] (Barry 1997: 165)

The major point of this chapter has been to argue that such an unconditional social minimum, suitably adjusted to the particular political context of the EU and its conditions of practical feasibility, provides one powerful policy proposal to realise the social democratic vision that both transnationalists and internationalists can endorse. Of course, I do not consider the EU minimum a panacea for all of the EU's social justice challenges. Rather, it should be seen as one aspect of a possibly larger set of institutional proposals that we should endorse in reflective equilibrium, provided that we accept the various transnationalist and internationalist arguments to some extent. As such, the EU minimum will fall short in some respect of the aspirations of strong transnationalists and will perhaps stretch the level of acceptable cross-national transfers entertained by solidarist internationalists. My non-ambitious claim here has simply been to argue that on balance, the EU minimum constitutes a policy proposal that is realistic enough to be acceptable to a broad range of liberal egalitarian and social democratic views, yet it is sufficiently radical so that its realization would greatly improve the economic justice of the EU's basic institutions.

Conclusion

At the beginning of this thesis stood a very simple and straightforward plan: First, define the principles of social justice that matter domestically. Second, provide reasons why. Third, investigate whether conditions in the EU are relevantly similar. As the chapters of this thesis have made clear, there have been numerous complications on the way. In particular, clarifying and then completing step three in the above structure has taken up the vast part of a doctoral thesis. Nonetheless, I have largely remained true to this initial blueprint. The first part of this thesis followed step one and two by presenting principles of economic justice that I deem most appropriate for domestic basic institutions, and explaining why such institutions should be governed by egalitarian or social democratic principles. The approach taken was 'pluralist egalitarian': our case for realising egalitarian institutions stems from different moral commitments, and cannot be reduced to a single source of moral concern. Most notably, I distinguished between (a) arguments for egalitarian domestic institutions based on the distinctive requirements of fairness that such institutions must observe (*direct arguments*), and (b) arguments that require basic institutions to foster certain intrinsically valuable relationships amongst their subjects (*indirect arguments*).

But presenting my conception of domestic social justice also required me to clarify along the way a number of foundational issues (such as the relationship between social justice and social equality), and moving on to step three necessitated responding to some 'external' criticism of the idea of developing a conception of social justice for the EU. This, notably, was the task of chapter three where I distinguished different standards of moral evaluation that apply to political institutions in general and the EU in particular, and rejected the widely shared assumption that the EU is unsuitable for social justice assessments. The part of this thesis most resembling the third step of my initial blueprint was completed in chapters four through six, which assessed whether direct and indirect reasons for egalitarian principles apply to the EU. In chapter four, I suggested that a concern with fair reciprocity points in the direction of some substantive

principles for the EU's basic institutions. I also presented the case that a concern with fair equality of opportunity seems much more compelling in the EU case than it does in other cross-national contexts because the EU features a common market in labour and goods. Moreover, I developed there (and in chapter five) the idea that agents of public power who claim to act as fiduciaries of those under their authority have duties of equal concern towards their subjects. Since the EU does claim such authority and creates rules governing a regime of property holdings, it therefore owes such duties to its subjects where it enacts policies that have distributive effects.

What my original 'blueprint' did not pay any attention to was a quite different way of approaching the EU, namely the internationalist perspective that sees the collective autonomy of political communities and sovereign equality as important values that also bear on our reflection about justice beyond the state. Instead of questioning the moral concerns that underpin such a perspective, I have shown (in chapter seven) why such a position is basically compatible with the creation of supranational authority. Even if domestic social justice and collective autonomy must have a special place in our normative thinking, this commitment in fact yields institutional proposals for specific kinds of advanced supranational authority that go dramatically beyond those that solidarist internationalists so far have been willing to accept: solidarists should applaud rather than fear the creation of supranational institutions with substantive distributive effects across states. Finally, in chapter eight, I explored whether these two perspectives can agree on particular pragmatic proposals for improving the existing institutional design of the EU through the introduction of an EU minimum. Thus, I have presented arguments to motivate the idea that more ambitious principles of social justice, in particular more ambitious principles of economic justice, are required at the EU level and I have made the case that quite different arguments can be enlisted in support of this conclusion.

Although I have outlined the case for supranational institutions that realise economic justice, there are further elements that I have not had sufficient space to explore in the depth that they deserve. First of all, I have not directly engaged in this thesis with the claim that cultural identities, for example nationality, play a decisive role in determining

the scope of our principles of social justice. A comprehensive account of social justice for the EU will need to engage with these arguments. I think the moral and empirical challenges that liberal nationalists advance against the possibility and desirability of cross-national solidarity can be answered – but the restriction of scope (and length!) of a doctoral thesis does not permit me to offer such a comprehensive defence here.[1] Similarly, there are difficult questions about the role that the collective responsibility of state agents should play in our conception of justice beyond the state which I have not been able to address here.[2]

The focus of this thesis has been on questions of social justice, and in particular questions of economic justice. But as I argued in chapter three, a comprehensive political morality will need to assess a political order in terms not merely of social justice, but also with respect to other important values. Most obviously, any political order must pass the test of legitimacy. In the light of the ideal of egalitarian relationships that has played an important role throughout this thesis, I have little doubt that the EU's political legitimacy depends ultimately not merely on whether or not its basic institutions realise a fair distribution of benefits and burdens, but also on whether these institutions realise an ideal of political equality in their procedures. Though I pointed out in various chapters that *democratic* procedures appear to be an indispensable element in the realisation of political equality amongst members of a political order, I have not offered a detailed account of how this ideal of *individual* political equality and 'collective political equality' of state agents might be reconciled in a multi-national and multi-level political order like the EU. So one important area of further research would be to develop a conception of 'demoïcracy' or 'multilateral democracy' that respects the social democratic vision I have presented.[3]

Finally, I want to end with a thought on whether this thesis has lived up to goal of providing a philosophically grounded proposal for the development of the EU that is at

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[1] Some arguments in this direction are offered in (Nicolaïdis & Viehoff 2012) and (Nicolaïdis & Viehoff forthcoming)

[2] I do so in (Viehoff unpublished)

[3] For some accounts that seek to develop such a conception, see: (Nicolaïdis 2013) and (Cheneval 2011)

the same time realistically feasible. In the opening paragraphs of *The Law of Peoples*, Rawls proposes that political philosophy is realistically utopian "when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition."[4] Has this thesis been successful in this regard, i.e. did it remain on the right side of the dividing line between a *realistic* utopia and pure wishful thinking? If we think back to some of the practical difficulties that even the modest proposal for the EU social minimum that I defended will face in currently prevailing conditions of economic crisis and intra-European discord, this may sound doubtful.

But it seems to me that the story of European integration itself provides evidence that such doubts may be overly pessimistic. Thinking about the international relations of European states has a long –and sometimes forgotten- pedigree in social and political thought. Take the following observation, offered by one of the most honest and astute observers of political life, Jean-Jacques Rousseau. In 1761, shortly after completing a first draft of his epochal *Social Contract*, Rousseau published a discussion of Abbé Saint-Pierre's proposal for a European federation of states. Rousseau's verdict on such a federation of European republics was this:

> "Let us distinguish then, in politics as in morals, between real and apparent interest. The former would be secured by an abiding peace; that is demonstrated in the Project. The latter is to be found in' the state of absolute independence which frees Sovereigns from the reign of Law only to put them under that of chance. They are, in fact, like a madcap pilot who, to show off his idle skill and his power over his sailors, would rather toss to and fro among the rocks in a storm than moor his vessel at anchor in safety."[5]

My suggestion has been that the EU can function as a haven in which the vessels of European states can moor safely and protect themselves against the potential dangers

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[4] (Rawls 1999b: 11)

[5] (Rousseau 1761 [1917]: 95)

inherent in complex interdependence. But not just any type of supranational authority will do – there needs to be a much more pronounced focus on the kinds of supranational rules that will ensure the protection of the social democratic conception of justice I have advanced. Rousseau was writing against the backdrop of European politics in which absolute monarchies were still the prevailing form of government, and recurrent military conflict was the order of the day. So it is perhaps unsurprising that Rousseau ends his reflections on a distinctly pessimistic note:

> "[I]f its advantages are so certain, why is it that the Sovereigns of Europe have never adopted it? Why do they ignore their own interest, if that interest is demonstrated so clearly? Do we see them reject any other means of increasing their revenue and their power? And, if this means were as efficacious as you pretend, is it conceivable that they should be less eager to try it than any of the schemes they have pursued for all these centuries? That they should prefer a thousand delusive expedients to so evident an advantage? Yes, without doubt, that is conceivable; unless it be assumed that their wisdom is equal to their ambition, and that the more keenly they desire their own interest, the more clearly do they see it. The truth is that the severest penalty of excessive self-love is that it always defeats itself, that the keener the passion the more certain it is to be cheated of its goal."[6]

And yet, in the face of Rousseau's own pessimism, the historical developments since his time, in particular the rise of democratic government throughout Europe, has given much hope to those defending his domestic vision of a just democratic society. After two devastating wars, Europeans have created democratic welfare states, and have even built a democratic federation that has moved in the direction of the international condition that Rousseau had hoped for but considered unlikely to materialise. Even in 1945, who would have thought that anything remotely resembling today's supranational democratic structure would ever be possible? So the success of the European project itself should give us hope that philosophically reasoned institutional proposals -even

[6] (Rousseau 1761 [1917]: 94)

those reaching far beyond the strict confines of day-to-day politics- cannot simply be dismissed as idle banter.

So far, the 'ever closer union' of European states and peoples remains imperfect, and it must evolve to deliver the social democratic promise. This thesis has argued why such an evolution is necessary, and it has offered some preliminary reflections on how the existing institutions of the European Union should be reformed.

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