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Abstract

This paper argues for a conception of social justice that operates beyond the nation-state but does so as an extra layer upon national conceptions of social justice. Thus, in the view transnational duties of social justice are complementary to national conceptions of social justice by, on the one hand, redressing for arbitrary inequalities as they operate in transnational interaction and, on the other hand, reinforcing the capacities of nation-state to maintain their own conception of social justice. The substance of such a transnational conception of social justice is illustrated by identifying three (emerging) transnational duties of social justice that can be read into emerging practices of the European Union: economic non-discrimination, institutional stabilisation, and social policy tolerance. Recognising these practices as expressing a transnational conception of social justice provides some critical insights into the way they have been institutionalised in the EU thus far as well as bringing to light some potential tensions between the three duties involved.

Keywords

European Integration — Global Justice — Institutionalisation — Non-discrimination — Social Europe — Social Justice — Solidarity — Transnationalism

Introduction[1]

The process of European integration is often portrayed as undermining social justice (cf. Leibfried 2005). Essentially, there are two sides to this argument. One is that the focus of the integration project on the removal of EU-internal barriers to trade undermines the ability of nation-states to maintain ambitious conceptions of social justice through their welfare state arrangements. On the other side, the European Union is criticised for failing to develop any substantial social dimension of itself, a 'social Europe', that might substitute for the arrangements that are undermined at the national level.

This paper aims to recast the debate on the relation between European integration and social justice by proposing that there is a distinctive EU conception of social justice with its own social obligations. These duties are less far-reaching than those established in European nation-states but considerably more demanding than any social duties we hold to the rest of the world. At the same time, the EU duties of social justice do not stand on their own but are in fact complementary to national conceptions of social justice.

In doing this, the paper contributes to the current debate in political philosophy about (the possibility of) social justice beyond the nation-states by advocating a layered conception of social justice (cf. Tinnevelt and de Schutter 2008; M. Risse 2011) and by proposing that such a layered conception is appropriately constructed by exploiting the relationship John Rawls presumes between conception of justice and the thickness of a shared public reason.

The paper consists of five sections. The next section briefly sketches the background of the debate on social justice beyond the nation-state. Section 2 focuses on John Rawls's conception of the conditions of justice and uses it to review the challenges it presents for extending the concept of social justice beyond the nation-state. Section 3 reviews the conditions of transnational interdependency as they have emerged in the EU as a context for distinctive claims to social justice. On this basis Section 4 then identifies and outlines three duties of social justice that can be identified in the European Union and that can operate complementarily to national conceptions of justice. Section 5 concludes.

Social justice beyond the nation-state

The concept of justice essentially answers what rights and duties people owe each other as being part of a shared political community. In what has become the predominant line in modern political philosophy, justice has a strong egalitarian tendency (Rawls 1971; 2001). Specifically, all people are considered to be essentially

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equally and hence to have an equal claim to a set of rights that is compatible with equal sets of rights being enjoyed by all others. Similarly, to the extent that social and economic goods are scarce, inequalities in their distribution can only be justified on the conditions that, first, the offices and positions that give access to them are equally open to all and, second, even the worst off benefit.

Many presumptions inform this view. One is that there is no desert in the conditions under which and the abilities with which one enters the world: "No one deserves his greater natural capacity nor merits a more favourable starting point in society" (Rawls 1971: 102). The girl who is born in a wealthy and well-functioning family with a good physique and brain "deserves" this as little as the boy who is born in a poor and dysfunctional family with few physical and intellectual abilities. Instead, these personal conditions are inherently arbitrary. A second presumption is that members of a political community are part of a system of cooperation in which they are inherently dependent on each other and none of them can do it alone (cf. Rawls 1993: §3). It is the combination of these two premises (the arbitrary assignment of natural abilities and political society as a system of cooperation) that makes it possible to consider the abilities present in society as a common asset that is subject to common distributive principles (cf. Rawls 1971: 101).

At the same time, in traditional theories of social justice, the political community to which these principles apply has generally been considered as bounded and, for all practical purposes, to coincide with national political communities. This assumption is however open to contestation (e.g. Beitz, 1979). Certainly with regard to the arbitrary assignment of natural abilities, there seems to be little reason why its scope would be confined to the national community. Indeed, the fact that one is born in one rather than another political community appears fundamentally arbitrary itself and of major consequence for the social and economic goods that one can expect to enjoy. Whether the boundaries of the political community as a system of cooperation can be contested appears as a rather more contingent issue. This very much depends on whether the boundaries between the political communities are genuinely complete or whether, to the contrary, the lives of members of different political communities do in fact touch upon each other. Cooperation may well transgress national boundaries and, certainly under contemporary conditions of globalization, it can do so in rather systemic ways so that we actually see the emergence of transnational systems of cooperation.

Indeed, even without any transnational engagement, members of different political communities would seem to owe each other at least certain moral (rather than political) duties. Thus, if another community comes under severe and urgent distress, for instance as a consequence of a natural disaster, other communities can be expected to assist if it does not put them under all too much risk. Also one can argue that political communities owe each other the negative duty to avoid imposing unwarranted harm upon each other. A further reaching claim is that political communities have a positive duty to intervene when they can prevent the (systematic) violation of fundamental human rights outside of their boundaries. Duties like these form the humanitarian minimum of a cosmopolitan morality.

However, in the present world no country is an island and there are ever more ways in which their fates become interrelated. The most obvious example in this respect may be how local air pollution affects the prospects of the globe as a whole. Another

prime example is how the organisation of global trade affects the opportunities countries have to share in the global wealth and means. These systematic interrelations require a distribution of the benefits and burdens involved, and any such distribution can be properly regarded the object of standards of justice.

Still, there are two fundamental questions to any claim of international justice. One is indeed to establish that there are any such claims beyond the confines of the nation-state. This claim has been most forcefully disputed by Thomas Nagel (2005). Nagel restricts the notion of justice, and the corresponding duties, to political conditions that are only effectively obtain in nation-states. Echoing Thomas Hobbes' positivist conception of justice, the key term in Nagel's argument is "sovereignty":

> 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.
>
> (Nagel 2005: 116)

Nagel's argument leads him to conclude that any aspiration towards justice beyond the confines of the nation-state needs to be preceded by the development of effective international political institutions.

Nagel's position can be contested from two sides. On the one hand, one can challenge whether the insistence on a sovereign political order is not too high a standard. In fact, it can even be disputed for contemporary nation-states whether they are still able to claim sovereignty in a context of globalisation and ever more complex and inter-dependent societies (van Parijs 2007: 647). A more realistic formulation of Nagel's condition might be that claims to justice only obtain with regard to stable set of political, coercive institutions or indeed when any system of cooperation is in place (cf. Cohen and Sabel 2006: 162). In any case, one may well wonder why justice would *not* apply to a political order under which people are linked just because it falls short of being fully sovereign.

Once the standard is appropriately adjusted, the other line of attack to Nagel's argument becomes apparent as well; namely, that by now power in the international domain is no longer in the hands of nation-state alone but that certain international institutions have effectively come to constitute an international order with a certain level of autonomy (or arguably even sovereignty) of their own (Cohen and Sabel 2006: 164/5). The European Union is obviously the main case in point, but to a somewhat lesser extent this claim can also be made for the WTO or the IMF. Some would even go as far to suggest that by now the whole world has effectively come to constitute an interdependent system of cooperation (Pogge 2002).

If we then grant that, at least within the confines of certain international organisations, there is scope for claims to international justice that are more than 'moral aspirations', then the second question is whether any special, 'thicker' arrangements within the nation-state can still be justified or whether these are inherently unjust as they discriminate against outsiders. On the latter question, the two basic premises of traditional conceptions of social justice pull in slightly different directions. In light of the premise of the arbitrary assignment of natural abilities, any

special duties to privileged others (like co-nationals) appear suspect as these relationships themselves are inherently arbitrary. [2] A stringent insistence that justice requires the redress for arbitrary assignment of individuals' capacities and social positions would logically compel towards a "monistic" (non-relationist) cosmopolitanism, the view that there is one single conception of justice that obtains between individuals regardless of the kind of relationships and association that connect them (Murphy 1998).

However, to the extent that duties of justice rely on the premise of political society as a system of cooperation, there may actually be valid grounds to differentiate between different circles of obligation to the extent that cooperation can be more or less intense. Such a perspective is for instance expressed by David Miller. Miller (2007: 277/8) opposes Nagel's restrictive view that reserves claims of justice to sovereign states. At the same time, he holds that the scope of claims of justice varies depending on the nature of the relationships that connect people and the responsibilities that arise from them. Individuals within a national community share further-ranging responsibilities with each other than that they do with outsiders. As Tinnevelt and de Schutter (2008) suggest, such an approach may pave the way for a "multi-level ethical position" in which different conceptions of justice apply to different forms of political association that may in fact be nested within each other. On such a position, it is possible, "even if one is committed to see nation-states as the privileged sites of social justice, [...] to recognize substantial amounts of social justice above the nation-state level" (Tinnevelt and de Schutter 2008: 521).

Matthias Risse labels a similar position "graded internationalism", which recognises the "normative peculiarity" of the state, it also allows international associations "such as the WTO, the EU, or the global order as such to be governed by principles of justice". This view "holds *different* principles of justice to apply depending on the associational (i.e., social, legal, political or economical) arrangements" (M. Risse 2011: 19). In fact, Risse even goes one step further in advocating a "pluralist internationalism", which suggests that there may indeed be multiple grounds of justice that need not only vary along one dimension (like the degree of association or responsibility) but which may in fact draw on multiple dimensions (degree of association, common humanity, and the common responsibility for the preservation of the globe).

While the actual conditions of transnational interdependencies and political cooperation do indeed call for layered approaches to social justice, such an approach runs the risk – as is in my view exemplified by Risse's rich but rather unwieldy 'pluralist internationalism' – of undermining the distinctiveness of duties of social justice and to equate them to any conceivable moral obligations and, thus, in Nagel's words (2005: 116), to "fall back on a pure aspiration of justice that has no practical expression". To avoid this risk, it is important to explicate and specify the exact

[2] Note Nagel's claim (Nagel 2005: 127) that the argument for redressing arbitrary inequalities is in fact premised on (and, hence, subordinated to) the condition of social cooperation in a nation-state. As he admits that it is somewhat "surprising" – or indeed problematic – that "an arbitrary distinction [of assignment to a nation-state] is responsible for the scope of the presumption against arbitrariness", his solution is that it can be justified by the exercise of will involved in our actual engagement in the nation-state. However, as this argument admittedly relies on the engagement with, rather than the assignment to, a nation-state, I believe it fails as Rawls clearly opposes such a Lockean take (recognising privileged claims on the basis of engagement) when it comes to other natural individual abilities and conditions.

foundation of claims to justice. That foundation, I propose, is best conceived of not in terms of (degrees of) coercion (Nagel), responsibility (Miller) or the general condition of social cooperation, but rather by drawing on John Rawls's account of "public reason". The specification of the concept of public reason as a basis of social justice can help us to determine the scope and content of the conception of social justice in the European Union that is indeed complementary to the national conceptions of social justice held in its member states (and provide a possible stepping-stone for an even more comprehensive global conception of social justice).

Social justice beyond the law of peoples

Despite Nagel's suggestion that his critique of justice beyond the nation-state is in fact in line with Rawls's (Nagel 2005: 122f.), I would argue that Rawls's position leaves significantly more openings toward the possibility of duties of justice beyond the nation-state. Certainly, Rawls reserves the concept of justice for the distribution of rights and duties within a political community (or a "people"). Still, he does recognise the existence of political (not merely moral) obligations beyond the nation-state in terms of the law of peoples (Rawls 1999a). More fundamentally, in my reading of Rawls, the scope of application of a conception of justice is governed by the sociological conditions of the existence of a system of cooperation and a shared public reason rather than by the legal condition of sovereignty, as Nagel has it. Hence, if these sociological conditions do actually apply beyond the nation-state, the question of justice arises as well.

The most fundamental difference that separates Rawls's laws of peoples from his theory of justice is that the object of the former are not individuals but rather their collectivities, the peoples, or – for most practical purposes – the (government) representatives by which they are incorporated. A people is defined by the sharing of a political structure, cultural orientations (or 'common sympathies') and a political conception of justice (cf. Rawls 1999a: 23/4). It is within a people that the capacity of self-government can be realised, as its members are together engaged in the development of a shared sense of public reason and of a common conception of justice. As a consequence, outsiders who do not have part in these processes can only at the margin assess the political rightness of the people's affairs and hence are bound to respect – within certain universal bounds, like the respect for basic human rights – whatever arrangements the people comes to adopt.

The flipside to this political autonomy is that a people also carries considerable responsibility for its achievements and its prosperity. Typically, Rawls (1999a: 108) submits that when it comes to the wealth on which a people can draw, "[t]he crucial elements that make the difference are the political culture, the political virtues and civic society of a country, its members' probity and industriousness, their capacity for innovation, and much else". Hence, he refrains from requiring full international solidarity for any economic misfortune a people may suffer (beyond the extreme of a sudden crisis that calls for immediate relief). Instead, the international duties of social justice that he does recognise remain limited to a "duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime" (Rawls 199a: 37; §15). By adopting this position Rawls thus markedly deviates from advocates of cosmopolitan justice who hold that the principles of social

justice obtain universally, irrespective of any particular, national, bonds (e.g. Beitz 1979).

Rawls's justifies the distinction of the international realm of the law of peoples from the national realm of justice with reference to the idea of public reason. Within a people, public reason defines the form and range of arguments that are considered to have a claim to validity in public debate, in particular the norms that govern the process of justification, and eventually the process through which the ideas that become publicly validated are differentiated from those that are not (Rawls 1993). The idea of public reason presumes citizens to be reasonable in the claims they put forward in the public realm, which requires them to recognize one another as free and equal and to sincerely strive for fair terms of social cooperation (Rawls 1999b: 136). It furthermore involves a sense of reciprocity in adducing reasons that one expects also to be reasonably acceptable to others who do not necessarily share one's own conception of the good life, and in a willingness to compromise and to accept reasonable terms proposed by others. Notably, however, and arguably in some contrast to his original theory of justice (Rawls 1971), within the bounds of these general features, Rawls recognizes public reason to be contingent on the specific historical and social conditions of a people (Rawls 1993: 251).

In the international context, Rawls (1999a: 55) also recognizes some form of public reason to operate between different peoples. In parallel to the way that public reason within a people is informed by the mutual recognition among its members as free and equal persons, the public reason between peoples is informed by the principle of them operating as free and equal peoples. However, while public reason within liberal societies appears to be rather thick so that it allows citizens to exchange views between each other and to develop the political conception of justice under which they are united, international public reason is taken to be much thinner as it amounts to little more than a duty to justification and lacks a broader context of common standards by which the validity of these justifications can be assessed. Notably, Rawls (1999a: 56/7) suggests that the parties representing peoples are ultimately not held to account in the international sphere but only in the context of their own domestic public reason.

Rawls's conception of the law of peoples serves to underline the value of nation-states as established political embodiments of self-governing communities with their own conception of justice (Macedo 2004: 1723). There is a need to recognize the value of the established national communities and the fact that, historically, only in their presence we have been able to address the questions of justice and democracy in the first place (cf. Follesdal 1997). Rawls's position also recognizes the diversity that separates different peoples (nations); how their positions are inherently marked by different interests, cultures and histories, even if they may be able to maintain peaceful and cooperative relations with each other. These nation-states are the building blocks on which the international order is founded. Indeed, much can be said for the claim that the international order cannot be conceived as a replacement of the nation-states but that it is rather premised on them; this applies not only to their role in its creation but also in its daily operation where nation-states perform crucial mediating roles in the process of collective political will-formation, processes that in many respects remain deeply rooted in the national context.

However, Rawls's position runs against its limits in the way he conceives of peoples as strictly separate from each other.[3] Even if Rawls shuns the concept of a state, his conception of the parties representing 'peoples' is very much informed by a state logic, the classic *raison d'etat* (Buchanan 2000: 702). Thus, the prime virtue of the law of peoples is to provide stability and peace (cf. Rawls 1999a: §5), which supposedly serves the mutual interests of states in protecting their sovereignty and security. Arguably indeed these concerns constitute the (lowest) common denominator of the rationality (or 'public reasons') one can expect to maintain among states that operate under conditions of equality and reciprocity (cf. Rawls 1999a: §6). Yet, in a world in which nation-states are increasingly interdependent, additional elements may be adduced to the public reason obtaining between them that do not only rely on the negative common good of averting conflict and war but also on more positive common goods, like international financial stability, open trade and the prevention of climate change.

Ultimately, the fundamental limitation of Rawls's laws of peoples lies in the fact that it completely nests individuals within their people. Typically, in his conception of the international choice position, parties do not engage with each other as individual members of their peoples, but as representatives of peoples as a whole (Beitz 2000: 678f.; Pogge 2006). Thus, this very modeling precludes individuals from engaging in any political relationships with members of another people without the mediation of their national representatives as well as the possible identification of transnational political duties that, as a consequence of these engagements, apply between them.[4] If anywhere transnational interdependency may have come to provide a basis for transnational political duties then it is in the European Union.

The circumstances of justice in the European Union

In the rest of the paper my focus is on the transnational relations within, what is arguably the most advanced international organisation of our time, the European Union. If anywhere public reason has thickened beyond national boundaries, then it is in the EU. After more than sixty years of European integration, relations between the member states of the EU are informed by much more than the mere threat of possible infringements in domestic sovereignty. Instead they have come to be

[3] Notably, pressed by an exchange with Philippe Van Parijs (Rawls and Van Parijs 2003), Rawls (1999a: 43, fn.53) dedicated a footnote to the possibility of liberal societies desiring to form something like "a single federal union". The procedure he sets out for such a move involves two steps. First, each society for itself needs to have a debate and an election on the question whether or not to join the proposed federal union. Then, among those who agree to join, a second common debate and vote has to take place on "which political conception [of justice] they believe to be the most reasonable" from the conceptions available between them, and which is then to govern their common affairs hence onwards. Notably, in this procedure, before members of different peoples are to engage with each other directly, they first have to decide on the dissolution of their own people. Rawls excludes the possibility of direct inter-person engagement while they are and continue to be part of separate peoples.

[4] In fact, ultimately, Rawls's modelling of the international original position even undermines the justificatory force of the obligations that are entered into by the peoples' representatives as it hinges on the authority of the peoples' representatives, rather than on the individual members themselves being reasonably persuaded. Hence, even if the logic of his argument may be reasonably compelling for governments, it need not oblige individual citizens as it does not speak to them and the public reason they are engaged in.

informed by an awareness of the deep interdependence of their domestic policies. This is particularly apparent for the economy of the single market of goods, but it also applies to, for instance, the operation of large-scale companies, student mobility, labour migration and the single currency. Thus, contrary to Rawls, citizens in the EU have come to be enmeshed in a wide range of social, economic and cultural transnational relations that are no longer effectively mediated by their nation-states. This character of the European situation is eloquently summed up by Kalypso Nicolaïdis:

> the European Union has established itself as a new kind of political community, one that rests on the persistent plurality of its component peoples, its demoi. […] its peoples are connected politically directly and not only through the bargains of their leaders. And yet, to the extent that these peoples are organised into states, these states should continue to be at the core of the European construct.
>
> (Nicolaïdis 2004: 82/3)

For that reason, the common good that European states share is not limited to warding off the mutual threat of war and other instabilities in their international context. It extends to the building up and maintenance of common frameworks that allow the welfare and well-being of each member state to be reinforced by that of the others.

Transnational interdependencies in the EU have steadily developed in direct interaction with the development of a common political structure. While nation-states remain key players in the EU, there are also unmistakable supranational aspects to its decision-making. Notably, the EU commands far-reaching power over its member states. EU laws are recognized to take primacy over national legislation, and the Commission and, if needed, the European Court of Justice can impose sanctions if states fail to meet their obligations to the Union. What is more, the supranational institutions of the European Commission and the European Parliament exercise considerable influence over EU decision-making. That combined with the fact that the use of qualified majority voting in the Council of Ministers means that EU legislation can be adopted against the will of individual states, makes it clear that individual states can no longer claim to be complete gatekeepers of the political power that the EU exercises over their citizens (*contra* Nagel 2005: 138f.).

The thickness of a shared public reason in the EU is further substantiated by the fact that all its member states are democracies. Thus the mutual interdependencies are incorporated and elaborated in domestic debates, and the views that are developed on the issues involved are likely to be more varied and sophisticated than the mere reinstatement that the national sovereignty and security need to be secured. Rather than that the national interest can be assumed as a more or less objective given, it becomes the object of a process of deliberation (T. Risse 2001). What is more, with increased international interaction, the public discussion of national interests may well take account of those being elaborated in other states. One can even expect that foreign positions become at times incorporated into the domestic public reason (cf. Savage and Weale 2009). Indeed, this is exactly what is indicated to take place through the transnationalization or Europeanization of domestic public spheres (Koopmans and Erbe 2004; Risse and van de Steeg 2003).

There is even some evidence that increasing interdependencies in Europe have been accompanied by a certain reduction of social-economic inequalities (cf. Beckfield 2006; Morrison and Murtin 2003). Overall, income levels in all EU member states have grown significantly over the years and the differences in the average income levels between the richest and poorest member states have steadily reduced.[5] Indeed, by now, national differences account for only a minor part of the income inequalities in Europe relative to the differences that obtain within the different member states. Yet the claim that socio-economic inequalities are increasingly "domesticated" in the EU and that national boundaries have become largely irrelevant, comes with some caveats. One is that even if inequalities between member states are reduced, poorer member states are unlikely to fully catch up with those who have been richer from the start, and even if they do (like Ireland and Spain appeared to do up until last year) they remain particularly vulnerable to economic downturns. A second caveat is that if inequalities in the average income *between* EU member states have steadily decreased, since the mid-1990s income inequality *within* the different countries has tended to increase again, although patterns are quite varied (Beckfield 2006: 972f.; Morrison and Murtin 2003).

To sum up, the European Union has given rise to thick transnational sphere marked by many and intense transnational interactions and interdependencies, a partly autonomous political order, increased mutual observation among national public spheres and socio-economic convergence. While these transnational conditions fall far short of a nation-state proper, and are in fact premised on the persistence of the constituting member states, I submit that they give rise to transnational duties of a political nature that go beyond the humanitarian moral minimum.

Three emerging duties of transnational social justice in the EU

The fact that European Union is marked by unprecedented transnational interdependencies that also affect the distribution of socio-economic goods gives reason to consider whether the political relations between individual citizens of the EU have become marked by further-ranging political obligations than the humanitarian moral minimum that is generally accepted to obtain beyond national borders. At the same time, it is clear that the European Union does not amount to a fully integrated people and a corresponding supranational welfare state. Indeed, the European Union is no state (let alone a welfare state), neither does it command a system of direct taxation. One may point at the redistributive instruments that the EU does command, like the Common Agricultural Policy, the regional and structural funds and investments in research and common European infrastructural projects (cf. Bache 2007). These are the biggest chapters in the EU budget, which has a total size of 140 billion Euros. However, set against the total EU GDP of 12,000 billion Euro, it is obvious that the EU budget offers rather minimal opportunities to genuinely redirect the distribution of incomes in Europe.[6] Hence, given its rather small size, the EU

[5] For a full review of the relevant literature and data, see Crum (2010: Section 1).

[6] Compare for instance the case of the Dutch governmental budget that is almost twice as big as that of the EU (270 billion Euro in 2008), while the national GDP of little under 600 billion Euro is only one-twentieth of that of the EU as a whole.

budget can play no more than a very modest role in reducing socio-economic inequality in Europe.

Still, even if European citizens are not committed to the duty to pay taxes to finance extensive redistributive programmes, I want to argue that social justice in the EU comes with its own duties that are distinct from the duty to pay taxes. Specifically, I propose three such duties that can be gleaned from European integration under the respective catchwords of economic non-discrimination, institutional stabilisation and social policy tolerance. Together these three duties may provide the kernel for a distinctive conception of transnational social justice in the EU.

Importantly, given their transnational character, these duties operate on two levels.[7] In the first instance they speak to states, the relations they maintain with each other in the framework of the EU, and the duties they owe to each other's citizens. But more than merely governing inter-state relations, through the states, they also have direct implications for the individual citizens of all states engaged in transnational interactions and call upon them to commit to their administration.

Basically, these three duties offer a reinterpretation of certain practices as they have emerged as part of the European integration process. The duties mentioned are incipient duties that have so far only been developed to a limited extent, and arguably imperfectly, within the EU. What is more, their emergence has not necessarily been driven by a conception of justice. However, once these practices have emerged, we can come to recognise them as the expression of a conception of justice. Indeed, their identification does not so much aim at descriptive (historical) correctness, but is rather posited as an interpretation that can be used to reflect on the potential normative implications of our practices (Habermas 1983). To the extent that the proposed formulation of these duties is found to be appropriate, the very act of explicating them may have a self-reinforcing effect and, thus, contribute to the evolution of the EU as a sphere of social justice. In fact, this is not fundamentally different from history of welfare arrangements at the national level, which also emerged largely for self-interested and ad hoc reasons but then gradually became the object of political programs of social justice (cf. De Swaan 1988).

Economic non-discrimination

The most obvious duty of social justice that is implied in the European integration project is the extension of equality of economic opportunity across borders. From its start, the creation of a single European market based on the free movement of goods, persons, capital and services has been at the heart of the integration project. This objective of a single European market is primarily driven by the neoclassical assumption that the integration of markets makes a more efficient allocation of production capacities possible from which all stand to benefit. Concretely, European economic integration offers national producers the opportunity to specialise in sectors in which they enjoy distinctive competitive advantages and access to the whole European market, while consumers gain access to a broader range of products to choose from (Balassa 1962). Under these conditions total welfare increases. What is more, each individual party should in principle be able to share in this welfare

[7] I thank Carlos Closa for alerting me to this issue, even though I am sure that my rather cursorily and pragmatic treatment of it here will fail to fully satisfy him.

increase by exploiting his or her relative niche. A key tenet of neoclassical economics is moreover that weaker economies stand to benefit more (in relative terms) from market integration than strong economies, and that integration thus leads to convergence between economies (Barro and Sala-i-Martin 1992).

The problem with this neoclassical economic model is that, while it may be true that market integration contributes to economic growth, it is much less evident that all parties are destined to share in these gains. An important reason for that is that producers and consumers operate in practice with imperfect knowledge about the opportunities in the market and, arguably even more importantly, with limited flexibility to adjust to them. For example, one does not turn Dutch meat farmers overnight into accountants even if economic models indicate that the holding of cattle is most efficiently left to other places in Europe. To the extent that actors are unable to fully adjust to the dynamics of the European market expects, the integration process is bound to produce losers as well as winners. Indeed, if the ability to appropriate the efficiency gains of the single market remains concentrated among specific countries or economic actors, then integration may even lead to increasing injustice.

However, as we are looking for a transnational conception of social justice, our evaluation has to look beyond the specific economic dynamics at the normative principles implied in the integration project. Importantly, the very idea of market integration can actually be seen as involving the removal of illegitimate sources of inequality and the creation of equal economic opportunities. As long as national markets are separated from each other, individuals from one country are prevented from exploiting the opportunities they might have in others. In this respect the boundaries between markets can be compared to the barriers that separated estates in pre-capitalist societies, in which, if one was born as a servant, one would never have access to the economic opportunities of a nobleman. The modern idea of (national) social justice can be regarded as driven exactly by the recognition that such traditional social barriers are rationally unjustifiable and, hence, stand to be abolished. Instead modern conceptions of social justice tend to grant a key role to the principle of equality of opportunities (cf. Rawls 1971: 83f.).[8] Thus the objective of economic integration can draw on the general cosmopolitan critique of national borders as an arbitrary source of inequality. Importantly, equality of opportunity does not directly grant all involved an (equal) claim to the benefits of the positions to which it applies. To the contrary, once equality of opportunity is secured, it rather serves to justify inequalities in the enjoyment of these benefits to the extent that these are the product of relevant differences between individuals (like differences in effort or willingness to take risk). Ultimately, the principle of economic non-discrimination does not erase the existence of socio-economic inequalities in the EU. It will however erase the relevance of national borders in this regard.

If the principle of equality of opportunity is central to our understanding of social justice, it is hard to see why its scope of operation would be limited by national borders. Thus the first EU duty of social justice that I propose is:

[8] Note that the principle of equal opportunities need not necessarily rely on the philosophical presupposition of the fundamental equal dignity of every human being (as it does in Rawls's work), but that it can also be derived from a utilitarian approach that considers the systematic exclusion of certain groups from certain opportunities as preventing the full realisation of the societal well-being.

1. The 'positive' duty to provide each other with full and equal access to each other's (national) economic domain and the opportunities it offers, including the duty to forego any form of nationality-based discrimination.

Notably, considerations of this kind are discernable in the legal framework of the European Union. From its inception, the single market has been founded on four transnational freedoms: the freedom of persons, goods, services and capital. These freedoms have been complemented by a strict principle of non-discrimination (Art. 18 TFEU) that prohibits discrimination on grounds of nationality within the scope of the European Treaties.[9]

The actual elaboration of the principles of equality of economic opportunity and non-discrimination has in the EU been mostly left to the European Court of Justice. The court's tendency has been to treat them as subservient to the realisation of economic freedom and "undistorted competition" in the European single market.[10] However, from the normative perspective of justice, it would seem more appropriate to consider the organisation of the single European market as a means towards the pan-European realisation of non-discrimination and cross-border equality of opportunity. The organisation of the European single market should then be oriented to the aim of offering all EU inhabitants, regardless of their nationality or place of residence, equal opportunities to share in its benefits. Undistorted competition may well be conducive to the equality of economic opportunity, especially to the extent that it serves to maximise overall efficiency. At the same time, however, there is nothing in the principle of equality of economic opportunity *per se* that precludes the delineation of boundaries to the markets (i.e. 'embedded liberalism', Ruggie 1982) and even the social need to correct their operation. However, as Fritz Scharpf (most recently 2010: 223) points out, such constructive interventions are not at the disposal of courts but rather require political action.

Institutional stabilisation

A second key aspect in which European integration has contributed to the reduction in socio-economic inequality in Europe emerges from the way in which member states that previously suffered from political oppression and lagging economic development have been able, to a greater or lesser extent, to catch up with the general European trend. Certainly from a broader, worldwide perspective, it is anything but self-evident that states successfully consolidate the transition from a dictatorship to a democracy and that they, at the same time, enter a relatively stable path of economic growth.

Obviously, this aspect of European integration has been of particular relevance to the three accession states of the 1980s (Greece, Spain and Portugal) and it has certainly

[9] Notably, the principle of non-discrimination has from the EEC-Treaty onwards (1957) been accompanied by the principle of equal pay for male and female workers (now Art. 157 TFEU). In the Treaty of Amsterdam (1997), the EU was moreover provided with the competence to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (Art. 19 TFEU).

[10] This has particularly come to the fore in the recent European Court of Justice judgements in the Laval and Viking cases (ECJ C-341/05 and C-438/05 respectively). For commentary, see Joerges (2010). For a more elaborate analysis of the conditions under which the ECJ has come to wield such powers, see Scharpf (2010).

also nourished the expectations of the countries from Central and Eastern Europe that joined the EU in the last decade. From a broader perspective this mechanism can be seen to apply for all EU member states (not least Western Germany in the early years of integration) for which the integration process has led to a level of stability and peace in the relations with their neighbours that has been without precedent in the long and bloody history of the European continent. Essentially, the stable international situation in Europe in the second half of the 20th century has created the conditions for steady economic growth and for government policies that contributed to a stark reduction in within-state inequalities.

In a way, the mutual involvement of European countries in the preservation of each other's institutional structures builds upon the humanitarian duty to assist societies that are stricken by external disasters and the somewhat more conditional duty that Rawls recognises for liberal peoples to assist those ("burdened societies") that face particularly daunting conditions to maintain a just or decent political and social regime (Rawls 1999a: 37; §15). The duty at work in the EU can be said to be considerably more extensive, not so much because it is more demanding, but rather because it is more substantial in terms of the conditions to be assured in all member states. EU member states are not only committed to support each other in the mere capacity of self-government, they are committed to support each other in the maintenance of a rather specific political order: one that relies on the consolidation of democratic political institutions, the protection of the rule of law and general basic rights, and the preservation of a market economy. The very substance of this order is indicative of the degree of convergence in the terms of public reason among the EU member states

Thus the second EU duty of social justice that I propose runs as follows:

2. The 'positive' duty to support each other in the sustenance of stable political and economic institutions that give effect to "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" (Art. 2 TEU) as well as to a free and effective market economy.

In the preparations of the accession of the new members from Central and Eastern Europe, these considerations have been formalised in the so-called 'Copenhagen criteria' for accession. Also they are formally incorporated in the central values on which the Union is founded:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
>
> (Art. 2 TEU)

Importantly, the Treaty provides for a procedure to suspend member states in case of "a serious and persistent breach" of these values (Art. 7 TEU). Also the so-called 'Solidarity clause' that has been included in the Treaty of Lisbon (Art. 222 TFEU) can be read in this light as imposing an obligation on member states to provide crisis

relief and to support the rebuilding of the basic political and economic infrastructure if one of them would be hit by a sudden crises or (natural) disaster.

Obviously, in the present financial crisis of the Eurozone, the limits of this duty with regard to the stabilization of the economic order are tested. On the one hand, the present crisis underlines that the effective maintenance of this duty is premised on the anterior duty of each state to fulfill the obligations that they commit to as members of the Union and the Eurozone in a loyal and sincere way (Art. 4.3 TEU), not least in respect of macro-economic policy-making and book-keeping. On the other hand, it is notable how EU governments – the strong and widely voiced resistance notwithstanding – have so far been committed to support each other, not merely out of a sense of solidarity but also by force of the mutual interdependencies. In that respect, this duty has already been deeply inscribed in the financial-economic order of the EU even if it is not necessarily recognized as a duty of transnational justice.

Social policy tolerance

The third EU duty that I want to propose touches upon the important issue of how a transnational EU system of social justice relates to the national systems already in place. As indicated, whatever EU duties of social justice may emerge, they certainly cannot substitute for the social policies of the member states. The EU institutional framework is far from equipped to take over the redistributive commitments maintained by the member states. A Rawlsian perspective helps to appreciate that the limited redistributive capacity of the EU is essentially justified by the primary claim to self-government of its member states and the relative thinness of transnational public reason. Importantly, there remains great variation between the social arrangements in the different EU member states – appropriately referred to by Fritz Scharpf (2002: 653) as "the legitimate diversity of existing welfare-state institutions and policy legacies at the national level".

Thus we rather have to conceive of EU social obligations as complementary to the national conceptions of social justice. Such a complementarity with national conceptions of social justice would even appear a necessary characteristic of any conception of transnational justice. This implies that besides the 'positive' duties of economic non-discrimination and institutional stabilisation, transnational social justice also comes with a 'negative' duty:

3. The duty to respect each other's political autonomy in defining one's social policy objectives nationally.

The duty of social policy tolerance or mutual respect may be easily mistaken as an apology for indifference, which would excuse the absence of any social policy beyond the nation-state. One may actually argue that up till the early 2000s, EU policy was in most respects (apart from labour in the single market) essentially indifferent to member states' social policy regimes. However, over the last decade, attempts have been made to treat social policies as a shared concern without imposing binding European measures. This is how the Open Method of Coordination, as it operates in the policy domains of employment, social inclusion and pensions, can be understood (Trubek and Trubek 2005). Under this method, member states agree on certain rather broad policy goals but choose their own means to work towards them. By way of systematic monitoring of the different measures and results obtained, each state is

stimulated to reflect upon its own performance and to learn from the experiences ('best practices') of others. Thus, it can be said that the EU Open Method of Coordination does make social policies the object of common concern whilst recognizing the diversity among national practices and expressing the respect for self-government in this domain.

Obviously, the ability of states to exploit the policy autonomy granted by this third duty is to some extent constrained by the first duty that obliges EU states to open up their markets to each other as well as by the second duty that imposes certain constitutional constraints.[11] The one area where the expansion of equality of economic opportunity in the European single market has clearly come to undermine social policy autonomy is in the area of labour law as it is closely related to the terms of competition in the single market. Thus, far-ranging common standards have been adopted with regard to matters like working conditions. However, in other labour law domains where no common standards have been agreed, industrial relations in particular, the European Court of Justice has, in the name of economic freedoms in the internal market, tended to constrain the ability of national actors to effectively maintain organizational practices as they have traditionally been part of the national labour regime (Joerges 2010: 78).

However, there is little compelling evidence that the equality of economic opportunity in the single European market genuinely undermines nation-state's redistributive capacity that is at the heart of their social policy autonomy (or what Damjanovic and de Witte (2008) call the "core social services") – not even in its present interpretation in which this equality is subordinated to the extension of economic freedoms. One common argument is that economic integration invites policy competition between governments to the effect that they are driven to outbid each other in the downward adjustment of, for instance, tax tariffs on capital gains. Yet, evidence of such "social dumping" is slim (Leibfried 2005: 270). For sure, some (formerly) poor member states (like Ireland and Estonia) have radically reduced some of their capital tax tariffs. However, while such measures may have put pressure on the tax levels of other states, most established and bigger EU member states have refrained from engaging in a 'race to the bottom'. In fact, EU member states have committed to a Code of Conduct that aims to prevent any tax measures that are specifically targeted at attracting non-resident businesses (OJ 1998: C 2/01; cf. COM (2009) 201).

Another popular argument points out that European integration constrains national political choices concerns the Stability and Growth Pact (SGP), which would prevent national governments from developing more extensive social programs (cf. Beckfield 2006). However, responses to the current macro-economic crisis (and earlier EU Council decisions at least since 2004) demonstrate that the SGP criteria are maintained in a much more flexible way than many (both on the left- and on the right-wing side) expected initially. More fundamentally, the SGP criteria only apply to the size of the budget *deficit* and not to the overall size of the budget itself. Thus they leave governments free to redistribute however big a part of the GDP as they wish, as long

[11] Cf. Rawls's question: "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?" (Rawls and Van Parijs 2003: 15).

as this is not financed at the cost of the deficit but by securing sufficient revenue. If EU governments have in recent years tended to reduce the size of their budgets, then this rather appears as the consequence of political choices than that it has been forced by European integration.

Certainly, national social policy autonomy is to some extent – and increasingly so – constrained by the international economy and the pressures it exerts. Still, these constraints do not exhaust the policy choices available for national governments. Research by Beblo and Knaus (2001) suggests that national policies remain key in affecting within-country inequalities, as they establish that the major differences in income inequalities between Eurozone states only appear after social transfer payments. As such between-state differences have persisted, and may even have increased, over the last decade, which is thus evidence for the continuing ability of nation-states govern their own conception of social justice.[12] While more can be done to protect the ability of nation-states to maintain their own conception of social justice (cf. Scharpf 2002: 663ff.; Ferrara 2009: Section III), deep varieties in welfare regimes in Europe are recognised to persist and unlikely to be eradicated soon, even though these varieties have become 'bounded' by the context of transnational interdependencies and the European single market (Falkner 2009).

Conclusion

Skeptics of the idea of transnational social justice suggest that social justice is the exclusive preserve of sovereign, national political systems and that any form of socio-economic redistribution across borders is no more than a form of charity that is not compelled by any sense of political duty. In this paper I have used the example of the European Union (as the most institutionalized case of an international political regime) to outline the contours of a transnational conception of social justice with its own distinctive political duties. Such a EU conception of social justice needs to be seen as part of a layered conception of social justice that recognises the "normative peculiarity" (M. Risse 2011) of the nation-state as a privileged site for self-government on the basis of a thick public reason. However, this privileged status of the nation-state notwithstanding, a transnational EU conception of social justice has come to be justified by the circumstances that European integration has become marked by many and intense transnational interactions and interdependencies, a partly autonomous political order, increased mutual observation among national public spheres and socio-economic convergence. These circumstances enable and, indeed, call for obligations of social justice with the objectives to redress arbitrary inequalities; to express transnational convergence on certain substantial principles and institutions; and to reinforce the capacities of nation-state to maintain their own conception of social justice.

Actually, these three objectives roughly correspond to the three obligations that I propose as constituting the EU conception of social justice:

[12] Interestingly, Beblo and Knaus (2001: 317) also find a correlation between the capacity to redistribute income and the level of wealth of a country: "It seems that more wealthy states (like Benelux, Germany or France) can afford to shift the income of their poor to a greater extent than can less wealthy states (like Ireland and Portugal)". Thus, if indeed the trend of economic convergence between the EU member states were to persist, this would increase the opportunities of the poorer countries to adopt more redistributive policies.

1. Economic non-discrimination: The 'positive' duty to provide each other with full and equal access to each other's (national) economic domain and the opportunities it offers, including the duty to forego any form of nationality-based discrimination.
2. Institutional stabilization: The 'positive' duty to support each other in the sustenance of stable political and economic institutions that give effect to "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" (Art. 2 TEU) as well as to a free and effective market economy.
3. Social policy tolerance: The 'negative' duty to respect each other's political autonomy in defining one's social policy objectives nationally.

This is thus a fundamentally different set of social duties than the ones that have been at the heart of national welfare regimes.

Crucially, the full impact of the EU social justice regime needs to be appreciated in combination with the conceptions of social justice that prevail at the national level. In contrast to many previous visions on 'social Europe', the proposal here is to exploit the complementarities between the two levels rather than to regard them as alternatives for – or even competitors with – each other. Indeed, one of the primary functions of the EU social justice regime appears then to facilitate the sustenance and development of a variety of autonomous conceptions of social justice in the EU. Notably, such an approach resonates well with recent thought on social Europe. Thus, Fritz Scharpf (2002: 663) has posited that "instead of striving for uniformity, European social law should allow different types of welfare states to maintain and develop their specific institutions in response to different understanding of social solidarity". In a similar vein, Maurizio Ferrara (2009: 225) calls for a EU 'social space' "whose main function should be to safeguard or reconstruct those institutional preconditions (...) that underpin domestic sharing arrangements".

In Section 4, I have sketched how the three duties can be read off from existing institutions and policies in the European Union. At the same time, explicating and reconstructing these practices in terms of duties of social justice also serves a critical, reflexive function (Habermas 1983), as it can bring out certain inconsistencies or incompleteness, like the prevalence of economic freedoms in the European single market over equality of economic opportunity and the weakly developed sense of vigilance among European states and citizens about the well-functioning of each other's political and economic systems. The reconstruction of these three duties also brings to the fore potential tensions between the three duties, in particular between the more centrifugal orientation of the social policy tolerance and the more centripetal orientation of the other two duties. Yet, I would argue that these are more reflective of the general EU imperative to find appropriate balances between unity and diversity than that they are indicative of the irreconcilability of the three duties *per se*.

Ultimately, my case for an EU conception of social justice serves to make the general point that the concept of social justice can have its validity beyond the trusted boundaries of the sovereign nation-state. EU citizens have actually become subject to duties of social justice that constrain their actions and those of their nation-states for the sake of a common European social good. What is more, I would suggest that, given their limited scope and their complementarity to national conceptions of social

justice, the three duties identified have the potential to command the reasonable acceptability of EU citizens within the bounds of public reason as it has developed thus far in the EU.

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