

Just Europe*

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Abstract

In a letter written in 1998, John Rawls invites Europeans to give up the project of constructing a federal union that would make Europe more like the United States. This invitation is consistent with the approach to justice he developed in The Law of Peoples. By contrast, both Thomas Nagel's approach and an understanding of social justice as global justice lead to a more ambitious interpretation of the demands of distributive justice within the European Union that calls for the pursuit of European integration. Further integration of the required sort would need to make European institutions more like those of the United States in three respects: a transfer union, a common electoral space, a shared language. However, given the trap, insightfully anticipated by Friedrich Hayek, in which the European Union finds itself today, even those inclined to adopt Rawls's approach to justice may be well advised to opt for a similar strategy.

There is something unique about the European Union, and also something specifically problematic, as illustrated by the quick succession of overlapping upheavals it has been experiencing over the last decade: the euro crisis, the refugee crisis, the Brexit vote, the revolt of “illiberal” member states. Unsurprisingly, this succession of upheavals has triggered a vivid discussion about the very nature and purpose of the European Union. This is not quite unprecedented in the history of the European institutions. But in the most recent discussion — between political leaders, in the general public and among academics —, the issue of justice has been more salient than ever before: justice between member states, justice between European citizens and justice towards third

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country nationals.¹ But what does justice demand in the case of this weird political entity now called the European Union, an entity that obviously falls short of constituting a nation state but no less obviously has become far more than a supranational organization of the familiar type?

As a native resident of the capital of the European Union and the author of several books on social justice, there is no way I could avoid pondering about this question. As I did so, I kept returning to a long letter John Rawls sent to me two decades ago, to my knowledge the only place in which he discussed explicitly the European Union. In the Spring of 1998, we had discussed at length, at his home in Lexington, the manuscript of his *Law of Peoples*. I subsequently sent him a written formulation of the main objections I had put to him. In particular, I had wanted to spell out more fully why, as a citizen of Belgium and of the European Union, I was both perplexed and disturbed by the implications of his approach. In a letter dated June 23, 1998, Rawls replied: “Now after some time I am back trying to complete *The Law of Peoples* and hope the end is in sight. However, I wouldn’t feel comfortable about the *The Law of Peoples* until I can formulate a reasonable reply to your long letter to me.”²

His letter ended with an uncharacteristically stern warning to us Europeans and an even more uncharacteristically fierce critique of American capitalism:

“One question the Europeans should ask themselves, if I may hazard a suggestion, is 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 great value to the citizens of these countries and give meaning to their life. The large open market including all of Europe is 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

¹ On the side of civil society, see e.g. Caritas Europa (2016) and Schraad-Tischler and Schiller (2016); on the academic side, Kochenov & al. eds. (2015).

² Rawls’s letter remained stuck for three months in Oxford before being forwarded to me in Louvain. It is therefore only in November 1998 that I could react to it. In October, however, Rawls had suffered a stroke that prevented him from doing any substantial new writing for the rest of his life.

meaningless consumerism of some kind. I can't believe that that is what you want."³

No, this is not what I wanted then or what I want today. However, unlike Rawls, I believed then and still believe that further European integration of the right sort is essential to the solution and not, or not only, an amplification of the problem. Let me explain.

Rawls's "people-ism"

Rawls's *Law of Peoples* presents and defends a dualist conception of justice: justice between peoples is fundamentally different from justice within a people. The liberal-egalitarian principles that define the latter are presented by Rawls as being chosen in an imaginary "original position" by representatives of individual members of each people concerned. These representatives are supposed to pursue their personal interest without knowing either their personal features, whether assets or handicaps, or their specific conception of the good life. By contrast, the principles that define justice between peoples should be understood as being chosen by representatives of *peoples*, each supposed to pursue the realization of their people's conception of a good society without knowing the specific contours of this conception or the people's specific assets and handicaps. This is what Rawls saw as the most consistent extension to the world of the liberal approach he developed for a particular society. Just as the characterization of a just society should not rest on a particular conception of the good life, the characterization of a just world should not rest on a particular conception of a good society, whether liberal or not.

What does a population need to form a people in Rawls's sense? It must be "united by common sympathies and a desire to be under the same democratic government" (Rawls 1999: 24). Because of the fundamental role Rawls assigns to "peoples" so characterized, I shall call his approach "people-ist".⁴ My first worry about this approach has to do with the very notion of "people" and the status it is given. Rawls' own people was unproblematically the American nation, not the people of Massachusetts or of NAFTA. But what is mine? As a citizen of Belgium and of the European Union, what should I regard as "my people", "mon peuple",

³ In August 2002, I asked Rawls for his permission to quote this passage in the published version of a lecture I gave in Paris (Van Parijs 2004). After rereading it, he gave his go-ahead. With the kind permission of his literary executors, Mardy Rawls and Tim Scanlon, the letter was subsequently published in full, together with the letter to which it responded and my response to it, in *Autour de Rawls* (special issue of *Revue de philosophie économique* Vol. 7, 2003). It is downloadable under the title "Three Letters on the Law of Peoples and the European Union", with an English version of the preamble, from the UCLouvain website.

⁴ The labels "populist" or "nationalist" might have been more elegant, but both are commonly associated, in both popular and academic discourse, with views that cannot be ascribed to Rawls. He certainly did not believe either in the existence or in the superiority of an authentic, homogeneous people to be contrasted with elites, ethnic minorities or foreigners. Nor did he advocate simplistic policies or authoritarian leadership.

“mijn volk”.⁵ Free movement, non-discrimination, and the growing impact of decisions taken at EU level on the one hand and the devolution of major competences to Belgium’s regional governments on the other combine to make the relationship that obtains between a Flemish and a Walloon citizen of Belgium less and less different from the one that obtains between a citizen of the Netherlands and a citizen of France. Moreover, could not the same people at the same time be “united by common sympathies and a desire to be under the same democratic government” on three different scales, say as Catalans, as Spaniards and as Europeans? Giving to Rawls’s peoples, essentially today’s nation-states, an irreducible role in matters of world-wide justice analogous to the one conferred to citizens in matters of country-wide justice, making them the ultimate monads of international justice, seemed to me far from self-evident.

I tried to express this perplexity in my letter. To which Rawls replied:

“You are critical of my use of the idea of the nation–state. But I think you overlook what I say about that idea in §2.1 [of *The Law of Peoples*]. There it says that the requirement that a liberal people have a common language, history and culture, with a shared historical consciousness, is rarely if ever fully satisfied. Historical conquests and immigration have caused the intermingling of groups with different cultures and historical memories, who now reside within the territory of most contemporary liberal democratic governments. Despite this, the Law of Peoples starts with this standard case, with nations as J. S. Mill described the concept of nationality strictly understood. Perhaps if we begin with this standard case we can work out political principles that will, in due course, enable us to deal with more difficult cases. In any event, a simple presentation using only liberal peoples as nations in this strict sense is not to be summarily dismissed. In a matter so complex as the Law of Peoples we must start with fairly simple models and see how far we can make them go.”

My problem with Rawls’s “people-ism”, however, is not that it abstracts from the “intermingling of groups with different cultures and historical memories” that creates non-standard peoples. It is that it takes peoples as given. As I put it in the response I then sent to him, there may be some countries and episodes of history in which the location and meaning of borders are so intangible that they are tantamount to facts of nature. But there are many other countries and periods in which either the location of these borders or their meaning or both are under challenge or negotiation, at least as much as most of the domestic political and socio-economic institutions. And then it seems to me that we are entitled to expect from political philosophers something more specific about what the borders should be and what they should mean than “The peoples must decide

⁵ If you consult Google Ngram, you will notice that from 1996 onwards, “peuple européen” occurs more frequently than “peuple belge”, and had Dutch been included among Ngram’s languages, the frequency of “Vlaams(e) volk” is most likely to have caught up with “Belgisch(e) volk”.

democratically", just as political philosophers are expected to say something more specific than this about the just pattern of political and socio-economic institutions. The "common sympathies, no matter what their source may be" (Rawls 1999: 24) that constitute the defining feature of a people are not fixed parameters. They are malleable, liable to being deeply affected by institutions and hence something that collective action can help create, strengthen, reshape and undermine. The inability of a theory of justice to provide any guidance on such matters may not bother everyone. It certainly bothers me.

Rawls's "stinginess"

This would be no more than philosophical knit-picking if the demands of justice, and in particular of distributive justice, were only marginally affected by the choice of the unit that qualifies as a people, that is as a result of shifting from justice within a people to justice between peoples or the other way round. The impact, however, is huge. In my conversation with Rawls and my subsequent letter, I had tried to explain that the approach proposed in *The Law of Peoples* not only perplexed me for the reason indicated, but also disturbed me, because the position expressed seemed to provide strong philosophical ammunition on the one hand to neo-liberal or nationalist opposition to the emergence of a "social Europe", i.e. of European institutions getting actively involved in social policy, and on the other to the Flemish nationalist demands for downsizing or scrapping altogether Belgium's federal welfare state. I contrasted the "generous" difference principle — the maximization of the expectations of social and economic advantages associated with the least advantaged social position — which his *Theory of Justice* proposes as a demand of intra-people distributive justice — with the "stingy" duty of assistance proposed for inter-people distributive justice in *The Law of Peoples*. This duty requires from just liberal societies that they should help *burdened* societies, i.e. societies whose level of development is insufficient for the viability of just institutions, up to the point from which this viability is secured.

Rawls's "people-ist" approach to justice, it seemed to me, implied that only the stingier principle applied to the European Union (which is not a people) and, arguably, to Belgium (made up of more than one people). Rawls politely responded that I misunderstood him and in order to help me understand better constructed a European illustration⁶:

"I believe that you interpret *The Law of Peoples* differently from me. Thus, suppose that two or more of the liberal democratic societies of Europe, say Belgium and the Netherlands, or these two together with France and Germany, decide they want to join and form a single society, or a single federal union."

⁶ This passage of the letter became a long footnote in the published version of *The Law of Peoples* (Rawls 1999: 43 fn53).

Such a federal union will need to satisfy a liberal-egalitarian conception of justice that might incorporate, for example, the difference principle.⁷ The letter continues:

“You write as if what I call later the duty of assistance is relevant to the situation we are discussing. Yet that, however, is a misunderstanding. This duty applies to a separate matter, namely, to the duty that liberal and decent peoples have to assist *burdened* societies. [...] What Belgium and the Netherlands owe to each other in a union between them cannot be a decision between say, the difference principle on the one hand and the duty of assistance on the other. Perhaps I fail to grasp your meaning.”

Thus Rawls did agree that something like the Difference Principle would apply if the member states chose democratically to form a single society or federal union, while it would not apply, in his view, at the level of the European Union as it is. But he found my comparison between the difference principle and the duty of assistance irrelevant in this context.

“Here we have a division of labor between the Law of Peoples, which is to serve as a scheme of norms for international law and practice, and the decisions of free and equal citizens in liberal societies. I don’t feel that this division of labor, once it is correctly understood, is stingy.”

I do understand that the duty of assistance and the difference principle cannot be understood as unequally generous rivals if peoples are regarded as fixed. But under historical conditions in which the borders between peoples are up for challenge or redefinition (whether outward or inward), this difference matters greatly. Hence, it does make sense, it still seems to me, to compare the weak obligations of distributive justice that hold, on Rawls’s dualist view, between Belgium and the Netherlands, or between Flanders and Wallonia, if they are to be viewed as two different peoples — an obligation currently not triggered because neither is “burdened” — to the undoubtedly stronger distributive obligations of justice that hold if they are viewed as, or become, components of a single people. Hence, much is at stake, distributively speaking, in the choice of regarding Belgium or the European Union as a single people rather than as an association of peoples.

EU-wide justice as cooperative justice between member states

I am nonetheless willing to concede that “stingy” may have been too strong a term: the gap between the distributive implications of intra-people and inter-people justice within the European Union, as these are framed by Rawls, is

⁷ More precisely, it will need to honor “a list of basic rights, liberties and opportunities”, give a “special priority to these rights, liberties, and opportunities”, and guarantee to all citizens “adequate all-purpose means to make effective use of their freedoms”. And it will need to satisfy the “criterion of reciprocity”: “those proposing the terms of cooperation must think it at least reasonable for others to accept them, as free and equal persons, and not as dominated or manipulated or under pressure caused by an inferior political or social position” (Rawls 1999: 14).

arguably not as wide as I thought at the time and suggested in our correspondence. Before turning to approaches to EU-level justice that can be contrasted with his, it can therefore be useful to briefly explore how much redistribution Rawls's approach could conceivably justify across the borders of the member states of the European Union.

Take, first of all, the duty of assistance to burdened societies. There was little risk of it being triggered among the founding member states. But after the accession of Bulgaria and Rumania in 2007, with a GDP per capita less than a quarter of the EU average, the net transfers realized through European policies can plausibly be justified as a way of enabling poorer member states to stabilize the rule of law and other key elements of a liberal democratic polity. True, according to *The Law of Peoples*, such a duty of assistance is not restricted to the less affluent member states of the European Union on the recipient side nor to its more affluent member states on the contributor side, but once a number of countries have joined some sort of association, it makes at least pragmatic sense to expect this duty of assistance to operate in the first place among them.

Secondly, justice between peoples need not reduce to the duty of assistance: "In addition to agreeing to the principles that define the basic equality of all peoples, the parties will formulate guidelines for setting up cooperative organizations and agree to standards of fairness of trade [...]." (Rawls 1999: 42) Rawls does not spell out how fairness is to be specified in this context. One particular way of doing so is playing a significant role in recent public and academic discussions about EU-level justice and is therefore worth exploring briefly here, whether or not this is the sort of thing Rawls had in mind. According to this interpretation, the European Union amounts to a massive cooperative venture intended to make each cooperating member state better off. EU-level justice is then justice between member states, not between EU citizens, and it requires the surplus resulting from cooperation — which includes, but does not reduce to, increased intra-European international trade — to be distributed in a fair way between EU member states.

The first task, if this approach is adopted, consists in identifying the relevant cooperative surplus. If one is willing to accept that Europe's economic integration contributed to an unprecedentedly long period of peace among European nations, this surplus must include at least part of what was saved as a result of avoiding not only war-related destruction, but also the ceaseless preparation for the possibility of war between immediate neighbors. Next, there is the net economic gain from getting rid of customs, from subjecting national monopolies to international competition and from boosting productivity through economies of scale and greater factor mobility. Finally, there is the improved legislative framework, whether owing to the pooling of expertise or to systematic mutual learning from best practices. Whatever it consists in exactly, it is plausible enough that the member states are each, at least as a whole and ex ante, much better off

economically than they would have been in the absence of the European Union. Cooperative justice then consists in distributing this cooperative surplus in a fair way. To determine what this means, one needs (1) sufficiently precise counterfactual conjectures about how each member state would have fared in the absence of the cooperative arrangement; (2) a metric that makes commensurable the parts of the surplus that accrue to the various members states, and (3) an appropriate criterion of fair allocation of this surplus.

Needless to say, the implementation of this approach raises thorny problems, as realized by anyone who has given some thought to the notion of the “value added” of European institutions.⁸ As time goes by and European cooperation amplifies and diversifies, conjecturing what the situation of a country would have been in the absence of this cooperation becomes increasingly speculative. Even assuming that one could get an accurate picture of this counterfactual situation, one still faces the question of how the value added should be measured: in terms of GDP, or of GDP per capita, or using a more complex metric that also gives some weight, for example, to peace or to freedom of movement or (for some countries) to the stabilization of democracy, over and above the impact of these putative effects on economic prosperity. And once the metric is chosen and each member state’s share of the overall cooperative surplus is measured, there remains the question of what a fair distribution of this surplus should be.

Should one adopt as a criterion, as is most plausible in many contexts, some notion of proportionality between benefit received and cost incurred: to each co-operator according to its investment?⁹ But how is this investment to be interpreted? One possibility one might think of is the (tiny) gross contribution of each member state to the budget of the Union, on average 1% of a country’s GDP, or more plausibly its net contribution (after deduction of EU subsidies to the country’s agriculture, infrastructure, research, etc.). However, this net contribution is negative for most member states.¹⁰ If this interpretation were to be adopted, cooperative justice would require a huge increase in the contributions of poorer member states to the EU’s budget.¹¹ However, one is here relying on a very superficial interpretation of what counts as investment in European cooperation. Even though there would be no cooperative surplus without some investment in this sense — if only to pay for the administrative staff required to manage the

⁸ See, for example, Rubio (2011), Nicolai (2012). Several estimates of the overall gains from economic cooperation, in particular from the deepening of the single market, have been produced by or at the request of European institutions. See e.g. Cecchini & al. (1988), Emerson & al. (1988, 1990), Pataki (2014).

⁹ I defend this criterion as the best interpretation of linguistic justice in terms of cooperative justice (Van Parijs 2011, chapter 2). Nicolai (2012: 17, 23) hints at a similar criterion for the fair distribution among member states of the “value added” of economic integration.

¹⁰ For a comprehensive overview of net transfers between member states, see: http://www.europarl.europa.eu/external/html/budgetatagance/default_en.html#spain

¹¹ See Nicolai’s (2012: 9) critique of cooperative justice as “*juste retour*” (according to which the EU’s expenditures in each country should be proportional to each country’s contribution to the EU budget).

cooperation —, the bulk of each country’s “investment” into the cooperative venture arguably lies instead in its willingness to open its borders and pool its resources. But how is this sort of investment to be measured?

Given the elusiveness of the relevant notion of investment and the difficulty of measuring benefit, perhaps the most one can hope for as an operational criterion is the requirement that no country should be worse off than if it had not joined. But is this criterion not trivially satisfied? No country, it seems, would join if it did not expect to gain. Nor would it remain in it if it did not believe it was gaining. However, even assuming that the “gain” by reference to which a country (its government, its parliament, its elite, its electorate?) decides whether to join or to leave is sufficiently close to the “gain” entering our normative criterion of fair cooperation, the satisfaction of this criterion is not that trivial. Owing to sunk costs and transition chaos, a country could be better off remaining than leaving but worse off than if it had never joined. As regards the single currency, this has been a widespread diagnosis of Greece’s position, for example. At the very least, EU-wide justice understood as cooperative justice between member states should therefore require something like an insurance mechanism that protects each member state against becoming worse off than if it had never joined the European Union at all and/or not participated in a significant optional component of it such as the adoption of the euro or the Schengen agreement on free movement.¹²

Taking cooperative justice into account, in any of these versions, would make the Rawlsian approach to distributive justice in the European Union less “stingy” than it would be if distributive duties between member states reduced to the duty of assistance to burdened societies. However, even if one could overcome the tricky conceptual and empirical difficulties raised by each of these versions and even if one gave them the most generous interpretation, the requirements of cooperative justice between member states would remain well below what Rawls stipulates as the demands of justice between citizens of the same people. And just as cooperative justice between the provinces of a nation state would be of marginal importance relative to Rawlsian distributive justice between its citizens, whatever content might be given to cooperative justice between member states would be relegated to the margin if justice within the European Union could be conceived, contra Rawls, as egalitarian justice among its citizens.

¹² In the most sophisticated treatment of EU-level justice to date, Andrea Sangiovanni (2012), inspired by Dworkin, develops a conception of cooperative justice between member states as insurance behind a veil of ignorance. Against the background assumption that every member state gains overall from joining the European Union, cooperative justice requires insurance schemes that protect each member state against the risks of entering specific projects such as the single currency. The criterion is that the scheme could be regarded by each member state as being in its self-interest if all it knew was the probability distribution of the risk covered by the scheme, not its own position in it. The application of such a criterion, Sangiovanni conjectures, would lead to a distribution of the cooperative surplus significantly more favorable to poorer member states than what would come about if the richer member states were allowed to leverage their bargaining power.

Nagel's "political" conception of EU-level justice

Such a conception may be found in the fundamentally different answer to the question of EU-level justice suggested by Thomas Nagel. In his influential article "The problem of global justice", he rejects what I here called Rawls's "people-ism", a view that relies on a "strong personification of peoples" and turns these into the "moral units" of the international order (Nagel 2005: 134-5). However, like Rawls's "people-ist" conception, Nagel's "political" conception of justice is dualist. He does agree with Rawls that liberal-egalitarian principles of distributive justice of the sort offered in *A Theory of Justice* apply only to the domestic realm, not to mankind as a whole. But the reason for this is that the demands of liberal-egalitarian justice kick in only in the context of a democratic state, i.e. in the context of a territorially defined population that does not need to form a "people" in Rawls's sense, but must consist of individuals who are at the same time the subjects and the co-authors of coercive laws applying to all of them. It is only in this context that the rules to be upheld by all must be justifiable to all as free and equal. Whether or not "common sympathies" prevail, this condition is satisfied, for example, in the United States and in each member state of the European Union taken separately, and this suffices to trigger the relevance of liberal-egalitarian justice for defining the fair distribution of resources among the individual members of their respective populations.

Suppose we accept this claim, what follows for the European Union? Not that much, according to Nagel, who briefly discusses it explicitly. Firstly, the European Union is not a state. True, the European Treaties and the EU's secondary legislation constitute coercive laws that enjoy primacy over national legislation, and judgments of the Court of Justice of the European Union are enforced by the courts of member states. Therefore, more than any other supranational institution, the European Union involves "a partial limitation of sovereignty". Yet, the European Union, like other supranational institutions, is "ultimately dependent on the sovereignty of separate states" (Nagel 2005: 138). In particular, it needs to "rely for enforcement on the power of separate sovereign states, not of a supranational force responsible to all" (Nagel 2005: 140). Secondly, the European Union is not, as yet, "a genuine European federation with some form of democratically elected representative government" (Nagel 2005: 144). It follows that rules emanating from the European Union "are not collectively enacted and coercively imposed in the name of all the individuals whose lives they affect; and they do not ask for the kind of authorization by individuals that carries with it a responsibility to treat all these individuals in some sense equally" (Nagel 2005: 138).

However, while denying that the European population formed a demos at the time he was writing, Nagel did not rule out that the relevant conditions may one day be met. "If there is not now a European civil society, is there nevertheless the

hope of one? Is the possibility compatible with the linguistic diversity of Europe? Could it perhaps be brought into existence as the result of democratic European political institutions, rather than serving as a precondition of their creation?" Once the European Union is turned into a genuine federation, "politics would eventually develop on a European scale to compete for control of this centralized power" and the democratically elected European government "would be subject to claims of legitimacy and justice" in the same way as national governments (Nagel 2005: 144)

After these words were published, a number of important developments happened in the European Union, especially, in 2009, the eruption of the public debt crisis in the Eurozone and the entering into force of the Treaty of Lisbon. Do they suffice to transform the European Union into a polity that meets Nagel's conditions? Firstly, the European Union is clearly still not a state. The threat of U.S. disengagement from NATO is admittedly strengthening the first modest steps towards military cooperation, and the transnational nature of today's terrorism is leading to an expansion of Europol. But this is very far from giving EU institutions the ultimate authority over an army and a police. On the other hand, the Greek crisis has made clear enough how deeply rules imposed at EU level can affect the distribution of resources across the Union, and how coercive they can both be and be perceived to be.¹³ Secondly, the European Union still fails to qualify as a democracy of a standard sort, if only because whatever counts as its executive — the Commission or the Councils — is not the emanation of an electoral majority. However, especially after the Lisbon Treaty's substantial expansion of both co-decision by the Parliament and qualified majority decision by the Council, it can claim to be a democracy of some sort. The bulk of its legislation must pass the twofold test of a public discussion in an assembly representing the whole of the citizenry of the European Union — a majority of whose members must support it — and of a negotiation between the representatives of the electorates of all member states — who must approve it unanimously or with a special majority.

It is therefore at least arguable that the European Union now satisfies, or is in the process of satisfying Nagel's conditions for the demands of egalitarian justice to be triggered. Most visibly since the adoption of the single currency by most of the member states, what the European Union has been experiencing is precisely what Nagel presents as the likeliest process through which the demands of egalitarian justice emerge:

"the increase and deployment of power in the interest of those who hold it, followed by a gradual growth of pressure to make its exercise more just, and to free its organization from the historical legacy of the balance of forces that went into its creation. Unjust and illegitimate regimes are the necessary precursors of the progress towards legitimacy and democracy, because they

¹³ See Genschel and Jachtenfuchs (2016) on the European Union's increasing exercise of core state powers.

create the centralized power that can be contested, and perhaps turned in other directions without being destroyed” (Nagel 2005: 146).

EU-level distributive justice as part of global justice

In conjunction with factual assumptions about how state-like and how democratic the European Union has become, Nagel’s “political” conception of justice provides one framework for thinking about EU-level justice as distributive justice between European citizens. Thinking about EU-level justice in this way is even more straightforward for those who believe that distributive justice, at least today, must be conceived as global justice. I am one of them. This is not the place to discuss the ever expanding philosophical literature on this question or even, more modestly, to try to explain why I have come to believe that any attempt to resist the extension to mankind as a whole of whatever egalitarian principles we believe define domestic egalitarian justice amounts to building fragile philosophical fences around the collective self interest of the richer part of the world. I shall limit myself here to stating dogmatically that two conditions that could be regarded as weak versions of Nagel’s conditions are sufficient for egalitarian distributive justice to make sense and to suggesting that these two conditions are now largely satisfied at the level of mankind as a whole.

Firstly, coercive rules can be considered necessary for the demands of egalitarian justice to kick in, but they can be imposed on a population without being issued by a common state-like entity. In other words, one does not need a world state to have something like a worldwide basic institutional structure. Rawls characterizes the “basic structure of society” as “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”. And the reason why this basic structure forms “the primary subject” of his theory of domestic justice is that “its effects are so profound and present from the start”: “Taken together as one scheme, the major institutions define men’s rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do.” (Rawls 1971: 7, revised edition 6-7). What a just basic structure is then meant to do is “mitigate the arbitrariness of natural contingency and social fortune” (Rawls 1971: 96, revised edition 82). Clearly, there is a worldwide institutional patchwork the effects of which are “profound and present from the start”, as it distributes rights and duties very unequally between human beings depending on where they were born and what citizenship they possess. The justice of institutions at the global level is therefore to be assessed in terms of how much these institutions manage to “mitigate the arbitrariness of natural contingency and social fortune”, the top predictor of which, in today’s world, is the nationality one is born with. This is not about sharing fairly the surplus from worldwide social cooperation — which, with poor and remote places, is very modest. It is about equalizing opportunities among

human beings by reshaping the institutions with which they are expected to comply — if only, for many of them, by not attempting to cross borders which, given their nationalities, the worldwide basic structure does not allow them to cross.

For this view of distributive justice to make sense to us, however, we need to regard a second condition as sufficiently satisfied, one that might be understood as a weak version of Nagel's second condition. To use G.A. Cohen's (1992: 282-3) phrase, we need to regard the whole of mankind as our "justificatory community". Those who have some say over the patchwork of coercive rules that currently form the global basic structure owe a justification for these rules to those expected to comply with them: not just motives to obey them, such as the sheer fear of sanctions, but reasons to accept them as free and equal human beings. This condition amounts to the adoption of a normative view about what relations should prevail between human beings. However, such a normative view cannot make much sense unless some factual conditions are fulfilled, essentially that people communicate with each other and are prepared to discuss existing inequalities as part of a worldwide conversation that is not confined within the borders of individual nations or exclusively channeled through their governments and embassies. Such a justificatory community is only firmly institutionalized with the emergence of a real deliberative democratic forum — Nagel's co-authorship. But I take a transnational justificatory community to exist already to a sufficient extent for this condition to be deemed realized, thanks to the expansion of travelling and transnational media, the spreading of lingua francas and the internet, the widening and thickening of international organizations and of the global civil society.

Once these two conditions are sufficiently met, the argumentative toolkit does not contain more tools to justify inequalities at the global level than at the domestic level. Firstly, some inequalities can be justified because of the place that needs to be given to personal responsibility. It is not incomes or welfare that need to be equalized, but opportunities, real freedom. Secondly, some inequalities can be justified because of the place that can legitimately be made to efficiency considerations. Some can be granted more real freedom than others if this makes it possible to sustainably grant greater real freedom to those with least of it. Under some circumstances, both types of argument can lead to the justification of borders and of the privileges they serve to protect. Firstly, in the absence of borders, selective migration might undermine the viability of domestic institutions aimed at equalizing opportunities within each country. Secondly, in the absence of borders, massive migration could further deteriorate the livelihood of the vulnerable people left behind in the countries of origin, and in the countries of destination it could destroy the institutions that are the source of the prosperity which migrants were hoping to share. Restrictions on the free movement can be justified in this contingent, consequentialist way, but only if accompanied by redistribution across

borders aimed at reducing or removing the need to impose such restrictions. Such a justificatory strategy is fundamentally different from a third type of argument excluded from my (global-egalitarian) toolbox, but not from Rawls's. Unlike them, I cannot get away with just saying: "Sorry, mate. You cannot complain about having so much less than me. You are not a member of my people. It is only against members of your own people that you can have legitimate complaints of an egalitarian sort."

Obviously, if global egalitarian justice is the underlying normative perspective, there is no good ethical reason to restrict the concern for egalitarian justice to the citizens of the European Union, which, in a global perspective, remains, even after the latest enlargements, a club of relatively rich nations. Indeed, it is often claimed that many policies adopted by the European Union — not least the Common Agricultural Policy, by far the most expensive item in the EU budget — are detrimental to some poorer parts of the world. It is also often said that whatever is done for greater distributive justice within the EU, is done at the expense of a more just distribution worldwide: whatever is being transferred to Bulgaria could have been transferred to Burundi. And it is, moreover, convincingly argued that ambitious redistribution within a rich part of the world is sustainable only if protected against selective immigration by poor outsiders. There is no need to deny any of this. Along each of these dimensions, the European Union could and should no doubt do better, by adopting trade policies, aid policies and immigration policies more favorable to some of the poor outside its borders. But there is no reason to suppose that European countries would do more or better along any of these dimensions if each of them had remained a fully sovereign state. On the contrary.

From the standpoint of global justice, however, there is a more fundamental justification for the closure and discrimination inherent in an integration process limited to a subset of countries. The main tool for sustainable greater global justice does not consist in generous discretionary measures but in binding institutions. As European Union politics is showing every day, it is no easy job to build the supranational socio-economic institutions needed for a fair distribution of resources across national borders, to shape the political institutions needed to create and sustain them, and to develop widespread support for such institutions in the public opinions of the member states, rich and poor. There is no supranational project in history that has gone as far in this direction as the European Union. For the sake of global justice, institution building in other regions of the world and at the level of mankind as a whole is similarly needed and may be more arduous, indeed may seem impossible. To prove that it is possible and how, there is not better means than making it work successfully in one place, at least to some extent, and learning from both achievements and failures. Such binding institutions are not only needed to pursue greater distributive justice across the borders of the member states involved. In addition, they are arguably

indispensable to the effective production of global public goods and avoidance of global public harms — not least the mitigation of climate change and its effects, particularly damaging for some of the poorer parts of mankind. It is not easy to keep free riding by individual countries under check and to block the march towards a global tragedy of the commons. It is hard to see how this could succeed without the discipline and commitments made possible — however laboriously — by regional integration. These are the two fundamental reasons why the creation and development of a club of relatively rich countries is compatible with, indeed required by, the pursuit of global justice — at least if it can do and does what it is, on this view, supposed to do.¹⁴

Hayek's trap

But precisely: is the whole argument not relying on far too rosy a picture not only of what the European Union has really been up to, but also of what it will ever be able to do? The European institutions, and in particular the European Commission, are frequently accused of imposing a “neo-liberal” project that could not possibly be interpreted, even by the most complacent observers, as the pursuit of egalitarian social justice. Indeed, it looks as if they are in the process of doing exactly the opposite, namely disable those instruments that such a pursuit requires, as Friedrich Hayek, the founding father of “neo-liberalism”, was predicting and hoping a multinational federation would do.

In an article published in 1939 under the title “The economic conditions of interstate federalism”, Hayek calls for the formation of such a federation because it combines two features. The first one is the disabling function of the common market, i.e. the economic constraints on state-level policy that stem from the freedom of cross-border movement:

“If goods, men, and money can move freely over the interstate frontiers, it becomes clearly impossible to affect the prices of the different products through action by the individual state.” (Hayek 1939:258).

¹⁴ If European integration is such a good thing for the sake of global justice, do countries have a moral duty to stay in the European Union if they are members and to join it if they are not? Don't they have the moral right to prefer greater sovereignty, whether merely formal or real, to the legal rights and duties of membership, with the associated consequences for their own economic welfare but also for the prospects of trans-national social justice? I confess that I find this language of country-level moral duties and rights problematic. The questions must rather be in each case, taking many things into account, including the specific vulnerability of supranational institutions and the difficulty of making them function and develop, whether keeping or including a particular country is good or bad as regards the prospects of greater global justice. Secession by a relatively rich country, for example, is at least *prima facie* a bad thing, as it amounts to escaping from the incipient web of socio-economic solidarity created by European institutions and regressing from a relationship of deliberation across national borders to one of bargaining between nations. Yet all sorts of contingent facts such as the current state of the political scene, the media or the public opinion of the seceding country can end up turning a set back into an opportunity.

This disempowerment of national governments would not be limited to price control.

“As has been shown by experience in existing federations, even such legislation as the restriction of child labor or of working hours becomes difficult to carry out for the individual state. [...] Not only would the greater mobility between the states make it necessary to avoid all sorts of taxation which would drive capital or labor elsewhere, but there would also be considerable difficulties with many kinds of indirect taxation.” (Hayek 1939: 260)

Alongside governments, all state-level economic organizations would be seriously weakened.

“Once frontiers cease to be closed and free movement is secured, all these national organizations, whether trade-unions, cartels, or professional associations, will lose their monopolistic position and thus, qua national organizations, their power to control the supply of their services or products.” (Hayek 1939: 261)

Wonderful ! — for Hayek. But won't the capacity to act at national level be replaced by a capacity to act at the newly created level of the federation? By no means — and this is the second feature that, combined with the first, accounts for Hayek's enthusiasm. For there are two serious obstacles to the creation of such a capacity. Firstly, economic differences are likely to be far more pronounced in a large entity than in a small one:

“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.” (Hayek 1939: 263)

The second obstacle is even more serious. A multinational federation lacks the common identity and the associated disposition to solidarity that nation-states can rely on.

“In the national state current ideologies make it comparatively easy to persuade the rest of the community that it is in their interest to protect "their" iron industry or "their" wheat production or whatever it be. [...] The decisive consideration is that their sacrifice benefits compatriots whose position is familiar to them. Will the same motives operate in favor of other members of the Union? Is it likely that the French peasant will be willing to pay more for his fertilizer to help the British chemical industry? Will [...] the

clerk in the city of London be ready to pay more for his shoes or his bicycle to help [...] Belgian workmen?" (Hayek 1939: 262-3)

The answer, for Hayek, is obvious. Admittedly,

"[t]hese problems are, of course, not unfamiliar in national states as we know them. But they are made less difficult by the comparative homogeneity, the common convictions and ideals, and the whole common tradition of the people of a national state." (Hayek 1939: 264)

In particular, decisions are less difficult to accept if the government taking them is regarded as consisting of compatriots than as consisting mostly of foreigners:

"Although, in the national state, the submission to the will of a majority will be facilitated by the myth of nationality, it must be clear that people will be reluctant to submit to any interference in their daily affairs when the majority which directs the government is composed of people of different nationalities and different traditions." (Hayek 1939: 264-5)

The outcome of the combination of these two features — economic constraints on member state government and political constraints on union government — should be clear enough:

"There seems to be little possible doubt that the scope for the regulation of economic life will be much narrower for the central government of a federation than for national states. And since, as we have seen, the power of the states which comprise the federation will be yet more limited, much of the interference with economic life to which we have become accustomed will be altogether impracticable under a federal organization." (Hayek 1939: 265)

Consequently, the creation of such a multinational federation is an essential and indeed a terrific tool for the realization of Hayek's neo-liberal utopia. Bluntly put: "the creation of an effective international order of law [in the form of a multinational federation] is a necessary complement and the logical consummation of the liberal program." (Hayek 1939: 269)

If there is one person who understood Hayek's message perfectly, it is Margaret Thatcher. She campaigned for her country to confirm its membership of the European Economic Community in 1975. When in office between 1979 and 1990, she strongly supported both the further unification of the common market, in particular through the 1986 Single European Act, and the further expansion of its reach made possible by the collapse of the iron curtain in 1989. In conformity with Hayek's scenario, the increased mobility created by the deepening of the common market further disempowered member states, while the increased heterogeneity created by the post-1989 enlargements amplified the obstacles to the federation taking over the regulatory and redistributive powers that the member states were increasingly unable to exercise. This is Hayek's trap. It is, it

seems, the trap we are in more than ever thanks to the successive jumps from 12 to 15, 25, 27 and 28 members and to the relentless defense of the “four freedoms” by the European Commission and the Court of Justice of the European Union.

Back to the nations?

Faced with this diagnosis, a first option consists in re-erecting firm borders, dismantling the four freedoms, resurrecting national sovereignty. This is advocated by “sovereignists” of both the right and the left.¹⁵ It is also the direction suggested by Rawls in the passage quoted at the beginning. This would mean sacrificing the economic gains of European integration. But so what? Remember the passage from Rawls’s letter quoted at the start: “The large open market including all of Europe is aim of the large banks and the capitalist business class whose main goal is simply larger profit.” What is bad for growth and profits need not be bad for social justice. But what about the fact that a retreat to nation-states would curtail drastically the opportunities opened to citizens of poorer European countries by the freedom of movement and the prohibition of nationality-based discrimination? What about the fact that it would slow down, stop or even reverse foreign direct investment in some of the poorer member states? What about the fact that it would mean the end of net transfers to poorer areas through the EU budget? For Rawls, this need not be a loss in terms of justice, as egalitarian justice is only relevant within peoples. For those who believe that egalitarian justice makes sense on a global scale, by contrast, this would amount to a significant setback, to a dismantling of some features of Europe’s basic structure that, taken by themselves, reduce unjust inequalities or, in Rawl’s vocabulary, features that enhance the “life prospects” of some of the least advantaged Europeans, improve “what they can expect to be and how well they can hope to do”, “mitigate the arbitrariness of natural contingency and social fortune”. For those who believe in social justice as global justice, such achievements are significant and should not be given up lightly. Nor should they forget the twofold potential for global justice inherent in regional institutional integration, as outlined above, however little it has been utilized so far. If there is a way of escaping from Hayek’s trap without sacrificing these achievements and this potential, they should go for it rather than unleash disintegration.

Note, however, that under some plausible factual assumptions, it is not only the globalists who should go for further integration of the right sort, but also those who, like Rawls, are committed to a dualist conception. For one question they must ask themselves is whether going back is really possible. What is illustrated by the Brexit saga is that even for a large country that had requested and obtained several important opt-outs, most significantly by refusing to adopt the euro, withdrawing

¹⁵ Some of these “sovereignists” are fully aware of Hayek’s prognosis and use it to support their case. See, for example, Streeck (2013: chapter III).

from the single market turns out to be an exceedingly laborious process. Moreover, the prospect of leaving the EU could only be sold to a crucial fraction of the Brexiteers by the promise of a “Global Britain”, i.e. of even more immersion in the global market and hence even more subjection to its dictates. For a small country, reverting to its national market in order to regain freedom from the constraint of competitiveness would be an even more formidable challenge. And, as the Greek saga illustrates, for member states of the Eurozone, the chaos likely to be inflicted to the population would be such that no responsible political leader could propose it. As Claus Offe (2015: 55) put it, “the euro is a mistake the undoing of which would be an even greater mistake”.

For most member states, therefore, the question is not whether to leave the single market or the Eurozone. They are in it and the transition costs of exiting are high enough to believe membership to be irreversible. The bridges behind us are not completely reduced to ashes, but they are far too brittle for a retreat to be worth risking. If this is the case, even those committed to a dualist conception of justice should regard the erection of a genuine European polity encompassing the European single market as far better than letting each national polity, immersed in this market — and in an increasingly globalized world market — use its regained formal sovereignty to comply with the demands of global capitalism. Indeed it would even seem to be essential to prevent a rapid erosion of their differences — that are indeed “great value to the citizens of these countries and give meaning to their life” —, under the crushing pressure of the obsession with the nation's competitive position. This is what would inexorably occur if we had the single market without a sufficiently strong political entity to regulate its operation and the distribution of its burdens and benefits.

Making the impossible possible

It follows that what needs doing is precisely what Hayek said was politically impossible and what his disciple Margaret Thatcher would have hated to see happening. In *Statecraft*, her 2002 book, she unsurprisingly formulates a fiery plea against moving in this direction:

“The parallel [with the United States] is both deeply flawed and deeply significant. It is flawed because the United States was based from its inception on a common language, culture and values — Europe has none of these things. It is also flawed because the United States was forged in the eighteenth century and transformed into a truly federal system in the nineteenth century through events, above all through the necessities and outcomes of war. By contrast, ‘Europe’ is the result of plans. It is, in fact, a classic utopian project, a monument to the vanity of intellectuals, a programme whose inevitable destiny is failure: only the scale of the final damage done is in doubt.” (Thatcher 2002: 359)

In the aftermath of a resounding speech on the ultimate objective of European integration (in Berlin in May 2000) by Joschka Fischer, former student activist, Green Party leader and at the time Germany's foreign minister, she did not hesitate to get personal:

"It is no surprise to me that the strongest proponents of Euro-federalism today often first cut their political teeth in the infantile utopianism, tinged with revolutionary violence, of the late 1960s and the 1970s." (Thatcher 2002: 343)

What she says, in a nutshell, is: "Please no federal utopia to get us out of Hayek's neo-liberal trap." And as the realization spreads that this is what we Europeans need, indeed as the determination spreads, among some of us, that this is what we are going to do, her advice to Britain became, and would today be, to get out of the grip of this monster. After her "I want my money back" in the 1980s, it is time for "We want our country back". But in order not to undo what was done over the decades in accordance with Hayek's script, Britain must retain as full an access as possible — and remain subjected — to the European market, which the United Kingdom and Margaret Thatcher herself can pride themselves of having helped deepen and enlarge. In this way, Britain, having regained its "sovereignty", could quietly undermine, through tax and social competition and cherry-picking immigration policy, any serious attempt to pursue egalitarian justice in Europe, whether at national or Union level. In other words: "Let us Brexit, but "softly", so as to keep our sabotage capacity intact." This is what could be called, without too much phantasy, Thatcher's plot, the conspiracy aimed at saving the Hayek-Thatcher neo-liberal project from the threat of the "classical utopian project" of a political, social and fiscal union.

If the possibility of doing what needs doing is to be preserved, it is important that this plot should be neutralized, to the extent that it can, by the final Brexit deal, the one that will define the "future relations" between the UK and the EU after the withdrawal is achieved. But it is even more important that we Europeans should get down to business and shape the institutions the European Union needs to help us out of Hayek's trap. Paradoxically, in order to avoid degeneration into "a civil society awash in a meaningless consumerism of some kind", as Rawls describes the United States, and into performing even worse than the United States in terms of distributive justice, the European Union will need to look somewhat more like the United States in three respects.

Firstly, the bulk of the American welfare state is organized and funded at the federal level, not at the level of the individual states. The European Union does not need to copy this by substituting an EU-wide mega welfare state for the various national welfare states. But it needs to set up something unprecedented: interpersonal transnational redistribution. Various proposals of this sort have been made and discussed in recent years, such as an EU-wide unemployment

insurance scheme or an EU-funded means-tested “eurostipend” for poor households, or a universal euro-dividend funded by an EU-level value-added tax or by a public share in private companies.¹⁶ Such redistribution will foster the pursuit of egalitarian justice both directly, through EU-level net transfers better protected against social and tax competition than country-level redistribution, and indirectly, by buffering national-level redistribution against such social and tax competition. The member states’ “separate forms and traditions of social policy” have been shaped, and should continue to be shaped, by largely separate debates. If only because of the linguistic distinctiveness of these debates, a particularly strong version of the subsidiarity principle should apply. In matters of social policy as in many others, it lastingly justifies a degree of decentralization significantly higher than what would be optimal with a mono-national population of equal size. But this is compatible with a sturdy EU-wide common floor. Indeed it requires it to be economically sustainable.

Secondly, such EU-level socio-economic institutions need to be made legally possible — which requires Treaty changes, or at least a very creative juggling with existing Treaties — and as a precondition for that, politically achievable and sustainable. As implied by Hayek’s remarks, it would help if the European Union could be turned into a people understood as an *ethnos*, a nation. This is an ambition occasionally expressed by Euro-enthusiasts in the tradition of Julien Benda’s (1933) *Discours à la nation européenne*. We can safely dismiss the prospect of the European Union ever displaying all the features of developed nation-states. However, it has certainly used some of the typical trappings, such as a flag, an anthem or mythical founders, to try to forge a common identity, a sense of belonging together that already distinguishes it quite sharply from any other supranational organization.¹⁷

More significantly, there is the strengthening reality and perception of forming a “community of destiny”. With one quarter of the independent nations of the world packed on 3.3% of the surface of the earth, there has been for a long time a strong feeling of interdependence among them. As Comenius put it in a passage of the *Praefatio ad Europeos* often quoted by Euro-enthusiasts: “we Europeans must be looked upon as travellers who have all embarked on one and the same vessel.”¹⁸ As contact and cooperation increase, interdependence grows. Robert Schuman, at the instigation of Jean Monnet, famously put it in his declaration of May 9th, 1950, regarded as the founding gesture of the European Union: “Europe

¹⁶ See Andor & al. (2014), Schmitter and Bauer (2001), Van Parijs (2013), Varoufakis (2016), Van Parijs and Vandebrught (2017: chapter 8).

¹⁷ See van Middelaar’s (2013: 226-251) “German strategy”.

¹⁸ Jan Amos Comenius, *Panegesia or Universal Awakening* (1666), quoted by Denis de Rougemont (1965 : 74).

will not come about at a single stroke, nor as a seamless construction. It will come about through concrete realizations that will first create a de facto solidarity.”¹⁹

Whether or not it is greatly helped by a sufficiently strong shared identity or a sufficiently salient de facto solidarity, what the political feasibility of further integration of the right sort requires is above all a stronger European people understood as a *demos*, a political community, involved in some sort of pan-European deliberation rather than just in inter-state bargaining. One key condition is that there should be a salient shared electoral space, as provided in the United States by the presidential election. A timid and precarious step in this direction was made with the informal institution of the *Spitzenkandidaten*. The Lisbon Treaty requires the European Council of heads of government to “take account” of the results of the European Parliament elections when appointing the President of the European Commission. The larger federations of national political parties managed, at least temporarily, to turn this vaguely formulated requirement into an obligation for the European Council to choose, among the people put forward as candidates for the job by the party federations, the one who can gain the support of a majority of the newly elected members of the European Parliament. Far more ambitiously, a direct election of the President of the Commission would provide a more transparent democratic legitimacy. But given the segmentation of the European demos and the idiosyncratic features of the European institutions, rather than trying to copy presidential regimes, it would make sense to introduce a pan-European electoral district for a subset of the seats in the European Parliament. This has been proposed repeatedly, including, at MEP Andrew Duff’s initiative, by the European Parliament’s Constitutional Affairs Committee in 2010, and again, more recently, by several political leaders, including Italy’s former Prime Minister Enrico Letta and France’s President Emmanuel Macron.²⁰

For the European Union to become more of a demos, however, there is something else, more pedestrian, that it needs and that would also take it somewhat closer to the United States. It was aptly identified by Margaret Thatcher herself.

“It is commonplace, but it is all too frequently ignored, that the European Union nations are extraordinarily deeply divided by language — no fewer than twelve main languages are widely spoken among the present members. [...] Of course, in time Europeans may all, in any case, speak English (I only half jest). If that happens, it might be possible to consider seriously trying to make democracy work at the pan-European level.” (Thatcher 2002: 342-3)

¹⁹ The idea that the interdependency generated by each step towards a unified Europe produces spillover effects in the form of a push for further steps towards even greater integration lies at the core of the so-called neo-functional theory of European integration associated with Ernst Haas and his followers. One does not need to believe in a deterministic theory of self-reinforcing integration (analogous to the theories of modernization or secularization or to historical materialism) to recognize that a powerful mechanism of this sort is at work.

²⁰ See e.g. Dewatripont & al. (1996: 17, 165-7), Van Parijs (1997: 74) for early formulations.

There cannot be a European demos unless people are able to communicate cheaply and effectively with one another despite the diversity of their native languages. This requires the democratization of a common lingua franca. In the European Union, this lingua franca is and will remain English, a mixture of German and French imposed on the British population by two successive invasions from the continent. Brexit will not mean the end of the supremacy of English in and around the European institutions. On the contrary, it will enable English to operate as a more neutral common medium among Europeans. After the Brexiteers claimed their country back, it is time for Europeans to reclaim their hybrid continental idiom and to use it shamelessly among themselves without needing to mimic either the British or the American accent. This need for a language shared by all EU citizens was well expressed in a speech by Germany's president Joachim Gauck (2013)

"It is true to say that young people are growing up with English as the lingua franca. However, I feel that we should not simply let things take their course when it comes to linguistic integration. For more Europe means multilingualism not only for the elites but also for ever larger sections of the population, for ever more people, ultimately for everyone! I am convinced that feeling at home in one's native language and its magic and being able to speak enough English to get by in all situations and at all ages can exist alongside each other in Europe. A common language would make it easier to realize my wish for Europe's future – a European agora, a common forum for discussion to enable us to live together in a democratic order."

As noted by Gauck, the spreading of competence in this common lingua franca is well on its way among young Europeans. But it must be managed so as not to remain the privilege of the better educated. It must also be managed so as to be consistent with respect for the diversity of native languages and their lasting preservation, thanks to the territory-specific implementation of coercive rules regarding the use of languages in public communication and compulsory education. And it must be managed in such a way that it does not create a European public forum colonized by the Anglo-American press — *The Economist*, *The Financial Times*, *Politico* and the like.²¹

These various steps towards further European integration amount to getting somewhat closer to the United States along three dimensions: a "transfer union", a federal electoral space, a shared language. The vision of Europe's future they sketch would certainly be denounced by Margaret Thatcher as a "utopian project". And perhaps it is. But so what? After having first presented his vision of a just society as making sense "under realistic and not utopian conditions", John Rawls made the construction of a "realistic utopia" one of the fundamental roles of

²¹ I discuss these various challenges in Van Parijs (2011).

political philosophy.²² And Thatcher's mentor himself, Friedrich Hayek, after having devoted a whole book to criticizing the Marxist "great utopia", turned into a vigorous — and effective — advocate of utopian thinking. In 1949, in the immediate aftermath of World War II, the seemingly universal progress of socialism inspired to Hayek the following reflection:

"The main lesson which the true liberal must learn from the success of the socialists is that it was their courage to be Utopian which gained them the support of the intellectuals and thereby an influence on public opinion which is daily making possible what only recently seemed utterly remote." (Hayek 1949:194)

Hence his resolution:

"If we are to avoid such a development, we must be able to offer a new liberal program which appeals to the imagination. We must make the building of a free society once more an intellectual adventure, a deed of courage. What we lack is a liberal Utopia."

It may have taken a while for the grip of his neo-liberal utopia to make itself felt, but Hayek cannot be accused of having overestimated its power. To counter his utopia, we must follow his 1949 advice and refuse to surrender to his 1939 prognosis of political infeasibility. In Europe and elsewhere, we need bold alternative utopias — indeed, in more than one sense, Rawlsian utopias.²³

²² Note the change between the following two passages describing the aim of Rawls's theory of justice. The 1987 version of the lecture notes for his undergraduate course *Philosophy 171* says: "We ask what a perfectly just, or nearly just, democratic society might be like under the circumstances of justice in modern democratic societies, and thus under reasonably *realistic and not utopian* conditions." (my emphasis) The corresponding passage in *Justice as Fairness*, the published version of these notes (Rawls 2001: 13) says: "We ask in effect what a perfectly just, or nearly just, constitutional regime might be like, and whether it might come about and be stable under the circumstances of justice and so under realistic, though reasonably favorable, conditions. In this way, justice as fairness is *realistically utopian*." (my emphasis again) In the opening section of the same book, this utopian role is presented as one of the four roles of political philosophy: "We view political philosophy as realistically utopian: that is, as probing the limits of practicable political possibility." (Rawls 2001:5) And he presents *The Law of Peoples*, the last book he wrote, as "a work that focuses strictly on certain questions connected with whether a realistic utopia is possible and the conditions under which it may obtain. I begin and end with the idea of a realistic utopia" (Rawls 1999: 5-6).

²³ The present article presents the third and deepest of my three main disagreements with John Rawls. The other two concern the justification of an unconditional basic income (Van Parijs 1991) and the relationship between justice and democracy (Van Parijs 1998). All three disagreements arise against the background of a set of shared convictions that Rawls articulated more systematically than anyone else, among them those that make me, along with him, a liberal-egalitarian realistic utopian.

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