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Esma Baycan

**The “ideal/Non-ideal Theory”
Distinction Applied to the Social Justice
Debate Beyond National Borders:
European or Global?**

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Esma Baycan (University of Geneva and KU Leuven)

The “ideal/Non-ideal Theory” Distinction Applied to the Social Justice Debate Beyond National Borders: European or Global?

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nccr – on the move, University of Neuchâtel, Faubourg de l'Hôpital 106, 2000 Neuchâtel, Switzerland
Contact for the Working Paper Series: info@nccr-onthemove.ch

Abstract

This paper focuses on the arguments in favor of extending distributive justice beyond national borders. Within the contemporary literature of normative political philosophy, we find arguments for either a global or European extension of distributive justice. Philosophers in favor of the European extension are also often supportive of extending to yet other places, but then the following philosophical question arises: Would the establishment of social justice at the level of the EU encourage or discourage the achievement of global justice? Such a question comes from a ‘non-ideal theorizing’ approach to evaluating whether or not the organization of distributive justice at the EU level would constitute an approximation to global justice and, thus, be considered as transitionally just. It proposes two positions, namely continuity and discontinuity approaches; the former claims that the extension to the European level encourages global justice while the latter claims it is discouraging. In considering the EU as having a privileged international bargaining power to contribute efficiently to global justice, the paper sides with the continuity approach while proposing an adjustment. The main argument, which is called a compatibility proviso, requires taming the potential harmful effects of the European level, in order to achieve the ideal of global justice in a ‘pareto optimal’ manner. The proviso strengthens the continuity approach by removing two risks: (1) the extension may stop once the distributive justice is organized at the EU level; but also that (2) such a deepening of the EU integration might be in itself harmful to global justice.

Keywords

Global justice , European social justice , ideal theory, non-ideal theory.

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Contacts

esma.baycan@unige.ch

Institute of Citizenship Studies, Faculty of Social Sciences
University of Geneva, 40 Boulevard du Pont d’Arve, CH-1211 Geneva 4

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1 Introduction

According to the data, the population living below \$1.25 a day¹ is only 0.7% in Europe and Central Asia, whereas it is 31% in South Asia and 48.5% in Sub-Saharan Africa (World Bank Data, 2005).

'The EU's social inclusion process uses a relative definition of poverty [my emphasis] that was first agreed by the European Council in 1975: "... people are said to be living in poverty if their income and resources are so inadequate as to preclude them from having a standard of living considered acceptable in the society in which they live..." (European Commission 2010, p.6)'.

Both the above statistical data and the 'relative definition of poverty' in the EU demonstrate that, unlike the global pathological state of affairs, Europe seems to have almost no problems stemming from structural poverty. Still, within the contemporary normative political theory literature there are those who argue for extending social justice beyond national boundaries, namely to the European level –European social justice (ESJ). In contrast, there are those who argue in favor of extending it to the global level– global justice (GJ). Vast inequalities among world states, as well as normative justifications for cosmopolitan justice, challenge the traditional understanding of exclusively national social justice. These two reasons explain why the extension should take place while remaining silent on why the European level is desirable for such a purpose. From a cosmopolitan perspective, it is not at all evident that, for example, Belgians should help the Dutch poor rather than the needier Haitian poor.

This paper aims to contribute to the existing debates by focusing on the unquestioned relationship between ESJ and GJ. Considering the depth of the EU's integration, the furthering of social justice beyond national borders is *more likely* to happen in Europe rather than the world as a whole. The question then becomes: Would the establishment of social justice at the EU level encourage or discourage global justice?² There are two possible answers: (i) ESJ encourages GJ; and (ii) ESJ discourages GJ. This paper focuses on the two possible answers, by creating respectively two different approaches to the subject, namely, *continuity* and *discontinuity* approaches.

The ESJ and GJ do not refer to unified conceptions, but rather to a polyphony of understandings in the *ideal theory*. Situating the question in the *non-ideal* theory, should then elude the problems generated by differences among ideals. In other words, the focus is on examining and evaluating these two different ways of realizing the ideal, and this falls in the domain of non-ideal theorizing. This is because of the functional differences between ideal and non-ideal theorizing. According to Robeyns (2008, p.345), *Paradise Island* can be taken as a metaphor for ideal theory, a reference point according to which the current state of affairs can be evaluated in an unbiased manner: a fair final destination for the journey. Knowing the end point is necessary, yet not sufficient to achieve

¹ According to the indicator of the data provided by World Bank, 'population below \$1.25 a day is the percentage of the population living on less than \$1.25 a day at international prices in terms of purchasing power parity (PPP) (World Bank)'.

² Another logical possibility would be that the question is non-valid, because of the distinctiveness of the European level from the global one. Considering the complex and interdependent nature of the international economy, it is an implausible answer despite its logical possibility. I think most readers would agree with such a choice.

it—we need to know how to get there (Miller 2013). The particular route is the subject of non-ideal theorizing. The paper, thus, takes GJ as *the* Paradise Island and questions whether achieving it via a smaller European Island can be evaluated as being more efficient than heading directly to the end destination.

The continuity approach argues that establishing ESJ will be beneficial to GJ and proposes a two-step concretization of the latter in the long term. There are institutional and identity-related arguments that the approach provides, which make the passage of the smaller European island relevant for GJ. *Institutionally* speaking: (1) the EU can function as a laboratory for the furthering of social justice beyond European borders in long term (Van Parijs and Vanderborcht 2012); and also (2) by promoting good governance and respect of basic liberties via its enlargement policy, the EU indirectly contributes to the furthering of social justice beyond European borders (Kymlicka 2006). By creating a European *identity* layer, the EU might generate the trust necessary to motivate the organization of welfare state policies at that level (De Schutter 2014; 2012a; 2012b). At the same time, it is more *feasible* to make such an extension at the European level in the short term.

The discontinuity approach, in its turn, distrusts the stated positive effects of ESJ for GJ. It takes the two levels to be incompatible and therefore defends that one should strive to achieve GJ right away. In other words, the boat should go to the 'Paradise Island' without any detours... There are institutional and identity-related arguments for such a stance. The institutional argument emphasizes the economic interdependence among the world states. By benefiting from its privileged diplomatic power to protect its own interests, as the argument goes, the EU ends up harming the global poor (Pogge 2005). The identity-related argument concerns the potential emergence of an exclusive European identity, insensitive to the rest of the world (Ferry 2001; 2005; 2010). The risk might be, then, that the 'boat would never like to ride further to its final destination'.

Raising such a question is theoretically interesting: political philosophers who defend the enlargement of social justice to the European level often defend extending it to the global level as well (Van Parijs and Vanderborcht 2012; De Schutter 2012a; 2012b). If, however, the first step would be harmful to the latter, as the discontinuity approach claims, then they might want to reconsider their position. Theoretically, it might help us to reflect on a relevant non-ideal path to achieve the ideal and thereby open the floor for a discussion of the tensions between the two levels. Up to now, the debate has focused on the tension between the European and national levels (Scharpf 2010).

In questioning the plausible non-ideal solution to achieve GJ, the paper will proceed in four steps. I will *first* consider the extension of the social justice debate beyond national borders through the perspective of the ideal/non-ideal theory discussion in order to identify the criteria of transitional justice. The *second* step is dedicated to presenting and evaluating two arguments from the continuity approach. The *third* step consists in performing the same operation of presentation and critique for arguments from the discontinuity approach. In the *fourth* section I will make an argument to adjust and strengthen the continuity approach. My argument can be summarized as follows: the *compatibility proviso* should be made part of the continuity approach. By this, I mean that the EU's integration should continue in the form of ESJ to the extent that its implications do not harm the outside world from within a consequentialist understanding of responsibility. This can prevent the potential harm of ESJ on GJ in the short term and reasonably guarantee the further

extension of social justice beyond European borders in the long term, after the establishment of ESJ. Such an argument is relevant in an international context in which the EU is the greatest contributor to international development.

2 Transitional Justice and the Ideal/Non-ideal Theory Distinction

This section serves to apply the ideal / non-ideal theory distinction to the social justice debate beyond national borders in order to identify the criteria for evaluating the means of achieving the ideal of justice. The below presuppositions mark the start of our inquiry:

1. Social justice is valuable and ought to be striven for.
2. Given that individuals everywhere are morally equal, it should not be limited by the contingency of state borders.

The argument is not that these presuppositions are generally agreed upon but rather that 'No inquiry can proceed without some presuppositions (Carens 2013, p.230)'. Focusing on the impact that extending social justice to the European level will have on GJ requires these two presuppositions. One can disagree with the first, the second or even with both. It is possible, for instance, to agree with the first, and oppose the second because: (1) one thinks that the range of social justice is inevitably limited (Waldron 1993; Walzer 1983); (2) the lack of coercion beyond the state level makes the first presupposition irrelevant for its wider application (Nagel 2008); or (3) it is incompatible with the first (Scharpf 2010).

These two presuppositions are characteristic of a cosmopolitan outlook. Still, cosmopolitanism is made up of a polyphony of ideals, and different ways of categorizing these ideals (Blake 2007; Van Parijs 2007). You can think that the nature of liberalism requires the application of justice throughout the globe, and favor a global difference principle or equal distribution of natural resources (Beitz 1979; Pogge 1989; Van Parijs 2012; De Schutter 2012b). Such a stance might be called Rawlsian Monism. There is a concept of global justice emphasizing sufficiency rather than equality, favoring a minimally decent life for everyone across the world (Rawls 1999; Bader 2012).³ The cooperative understanding, in its turn, emphasizes the existence of trade- independent global public goods relevant for GJ, e.g. institutions concerned with environmental problems and international security (Van Parijs 2007, p. 640). Similarly, there is no unique ideal for ESJ either. The main distinction is whether or not a European mega welfare-state is desirable. Often philosophers who are in favor of ESJ might prefer the EU to *take over* national welfare systems gradually (De Schutter 2012a), whereas others, e.g Van Parijs, is against the removal of national welfare state policies.

In our aim to evaluate whether or not ESJ might be considered an approximation of GJ, the focus is situated in non-ideal theory. In this sense, it is important to explain the ideal/non-ideal theory distinction at this stage. According to Robeyns (2008, p. 348), there are three different components of theorizing, namely: (1) The ideal theory where the principles of justice are discussed and justified; (2) The non-ideal path of how to achieve the described ideal; and (3) The issues related to

³ For a discussion concerning the equality and sufficiency approaches see: (Zanetti 2005).

policy implementation. Let me call these three components together 'multilayered justice'. According to Rawls (1999a [1971], p.8), the ideal theory constitutes the essential part of a theory of justice whereas Miller (2013) holds that the non-ideal theory is the essential part.⁴ The non-ideal theory depends on the former; it takes the unfavorable conditions of the empirical into the account in order to give 'justice enhancing recommendations' for the particular injustice at hand. This paper does not take the distinction as designating mutually exclusive approaches, but as a division of labor.

The transition has a different logic of justice that Simmons has recently conceptualized as 'transitional justice'. Only the policies whose outputs will improve the world, and so, approximate the ideal, will succeed and will be considered transitionally just (Simmons 2010, p.22). Rawls expects transitional justice to respect certain conditions and to obey the *same* priority rules defined in the ideal theory, i.e. good governance and individual rights rank before socio-economic rights. Moreover, for Rawls, recommendations made by a non-ideal theory should be 'morally permissible' and 'politically possible' (Simmons 2010, p.7). The first condition implies *gradual changes* where the second emphasizes *feasibility*. Up to this point, two objections can be made against Rawls' idea of transitional justice: (1) the established conditions do not pay attention to the grievousness of an injustice at hand (Simmons, 2010); and (2) the cost of good governance, overlooked by Rawls, can better be used in urgent, poverty-related matters (Farrelly, 2007). I agree with the first objection, because oftentimes overlooking a grievous injustice might be in favor of a particular group, and cause 'bad idealizations'⁵. The second highlights a very complicated issue⁶; yet, I think that good governance is too significant to overlook for the sake of poverty relief.

There are, thus, four conditions that transitional justice should respect: (1) Approximation to the ideal; (2) Rawls' priority rules; (3) Moral permissibility and (4) Feasibility. These conditions will serve to evaluate whether or not the establishment of ESJ will encourage GJ. As Simmons (2010, p.22) points out, partial targets can only be posited in case one can prove '...that hitting those targets will be consistent with all other aspects of overall societal [global in our case] justice...' The continuity approach points to such a compatibility, while the discontinuity one argues that it is better to go directly for GJ. The next two sections will present and evaluate these two approaches.

3 The Continuity Approach

This section consists in presenting and evaluating two institutional arguments and one identity-related argument from the continuity approach, according to the criteria of 'transitional justice'.

3.1 Institutional Arguments: European Enlargement and Euro-dividend

⁴ For the critiques of ideal theorizing, see: (Sen 2006; Mills 2005; Farrelly 2007; Miller 2013).

⁵ The normative distinction between good and bad idealizations is important: 'Bad idealizations amount to ignoring the existence of certain forms of injustice that need to be theorized rather than simply ignored in the theorizing. Often this amounts to leaving out aspects of life that are more relevant for some groups in society than for others. (Robeyns 2008, p.358)'.

⁶ The dilemma, related but not central to the argument made in this paper, is the following: whether the priority rules should stay the same as in an ideal theory, as Rawls and (to a certain extent) Kymlicka argued, or should urgent poverty relief take precedence like Sen, Nussbaum, Simmons and Farrelly argued?

Kymlicka and Van Parijs give two types of institutional arguments. They conceive the function of the EU in different ways. Kymlicka believes it spreads the liberal national model to the rest of the world while Van Parijs sees it as a laboratory for furthering transnational justice.

Kymlicka values social justice without defending its extension beyond national borders. In *Another Cosmopolitanism*, Kymlicka (2006, p.130), disagrees with Benhabib on the normative function of Europeanization, arguing that it does not and *should not* serve to transcend the liberal nationalist model or the contemporary nation-state system, but Europeanization does and should tame its side effects. Thus, the EU then normatively strengthens the liberal nationalist position by taming its negative tendencies and spreads the model through the enlargement policy. Because a liberal nationalist state is often a social state, the EU will contribute indirectly to GJ through enlargement. Even though Kymlicka embraces social justice as a national ideal, its spread through the EU still serves to transnationalize it, so that we can consider him to embrace the second presupposition *via* the mediation of the state.

This argument fulfills the requirements of Rawls' priority rules in its emphasis on the *good governance* that the EU promotes. If one can prove that the requirements of the priority rule can only be guaranteed in the context of the nation-state, then it might be considered as a 'transitionally just argument' to promote social justice. If, indeed, this priority rule is proved to be respected, then making ESJ and GJ compatible is easy: defend the enlargement policy for the EU and assure its spread as far as possible. The argument can also be strengthened by taking the different EU pre- or post-accession funds into account, e.g. PHARE, ISPA, SAPARD, to demonstrate its positive effects on the economic development in Eastern Europe. Yet, the EU is a regional organization without the intention to enlarge endlessly and thus, inevitably limited to Europe.

According to Van Parijs, ESJ, when established gradually, can contribute to GJ. This is related to the policy implementation issues. On a larger scale, the institutional mechanism will be complex and its implementation might result in contradictory outcomes. The European scale might then serve as a laboratory in which the correct implementation can be developed for an application *in the long term* and to the global scale (Van Parijs and Vanderborcht 2012, p. 12).

'Feasibility' and 'historical dreadfulness' are two justifications supporting the laboratory argument. In terms of feasibility, in the short term, ESJ is more likely to be implemented than GJ. In other words: where 'the highest-sustainable amount of basic income' should ultimately be established at the global level, it can "most promisingly be established at the EU level (Van Parijs and Vanderborcht 2012, p. 26)". The historical context, in its turn, emphasizes the dreadful and long process that resulted in the welfare state policies in Europe. In his view, this makes it something to *be defended against* 'outsiders' who might become 'welfare tourists' and thereby turn into net beneficiaries of these policies, and by doing that, end up attacking the democratic legitimacy of these policies.⁷ This historical analysis is accompanied by a contemporary one: in the current

⁷ "The ultimate aim is global distributive justice. But the safest way to approach it is not to let existing redistributing schemes be destroyed by open and non – discriminatory borders. Comparatively generous institutionalized solidarity needs protection against unsustainable immigration by likely beneficiaries. Its survival and its spreading are needed on the way to its globalization (Van Parijs and Vanderborcht 2012, p.23)".

financial crises (in Greece and Portugal for instance) as well as the democratic legitimacy crises, the political promotion of establishing ESJ can help to resolve the most important issues that the Union is facing. To achieve the first step, welfare state policies should be protected by a ‘Fortress Europe’. It is recognized as a ‘cruel dilemma’⁸ for any liberal-egalitarian thinker, yet it should be defended to keep the social state alive. It is interesting to note the opposite tension, namely, that when global inequalities result in economic migration, it is the GJ-related problems that threaten ESJ.⁹ Nevertheless, the idea is that the basic income has to be established as a supplementary income, which does not replace but support the national welfare policies as a form of Euro- dividend, financed by a Value Added Tax applied on products. Consequently, the universal basic income should be established.

The laboratory argument, like Kymlicka's argument, is problematic because it takes the further expansion for granted. Van Parijs and Vandenberght provide the necessary conditions for why ESJ should be established and why the furthering of social justice beyond national borders is justified. This line of argumentation, however, disregards that after ESJ establishment, the expansion might stop. Such a break is *more likely* in a public sphere which considers outsiders as potential welfare tourists. In other words, after having established the Euro-dividend, it is not evident that the Belgians or French would also be inclined to be generous towards the needier Haitian or Rwandan. Indeed, if they are not, it seems that the universal liberal-egalitarian position of Van Parijs and Vandenberght risks being ending up in a form of ‘European ethical partialism’. Even though both institutional arguments fulfill the other conditions of transitional justice –Rawls' priority rules, moral permissibility and political possibility– ESJ can be considered as a deviation from and not an approximation to GJ in the event that its expansion stops at the European level. Let us now consider whether the identity-related argument can compensate for this weakness.

3.2 The Identity-Related Argument: National Pluralism

The identity-related argument, put forward by De Schutter, emphasizes the motivational value of common yet pluralistic identity layers in order to extend the borders of justice *first* to the European level and *ultimately* to the global level. The argument goes as follows:

1. It is empirically the case that: (a) People can have pluralistic identities, e.g. the coexistence of sub-national and national identity layers together; (b) which are changeable over time;
2. Sharing an identity layer provides the necessary trust, and therefore, is instrumentally valuable for welfare state policies to be organized for a given scope;
3. *Given 1*, new identity layers compatible with each other *can* be built at the larger scale. Apart from this, they *should* be built at a larger scale;

⁸ “...it crudely exposes the cruel dilemma between sustainable generosity towards the weakest among one’s own citizens and generous hospitality to anyone who wishes to come in. This dilemma is the most painful challenge for the left throughout the more developed world (Van Parijs and Vandenberght 2012, p.23)”.

⁹ It would be interesting to consider a symmetrical question: Would the establishment of GJ encourage ESJ? Yet, here the question is a one-way procedure from the European to the global level.

4. *Given 1 and 2*, when *social engineering*¹⁰ is done to bring about 3 in a framework that respects liberal values, then the ideal of social justice *can* be concretized beyond national borders;
5. Considering the moral equality of individuals across the world, social justice *should* be organized for the largest scope possible, preferably at the global level;
6. The European level is the only plausible political project where an extension beyond the national borders might take place. A first step towards the European level will encourage its further extension to the global level.

We will begin by developing the first four premises. Against a static and unitary understanding of cultural identity, i.e. cultural essentialism, (1) people in the contemporary world have pluralistic and fluid identities. Liberal nationalist thinkers share the second premise. National identity, according to them, is only valuable to the extent that people sharing it judge it to be so, and not valuable in itself. Additionally, it is 'instrumentally valuable' because of its trust-providing function to extend the 'ethical community' from family and friends to strangers (Miller 1995, pp.90-98; Sandel 1992, p.23; MacCormick 1982; Tamir 1993). In other words, ethical partialism for the near and dear can be overcome for the sake of co-nationals. Sharing a common identity is what allows for strangers to be conceived as 'one of us', and enables public support for welfare state policies. This is due to the liberal nationalist argument that welfare state policies are impossible to be concretized at a given scale, unless people share a common identity.

De Schutter takes this instrumental value of nationality and builds on it to achieve the normative ideal of global justice by developing his concept of 'national pluralism'. According to him, liberal nationalism can serve to extend the borders of ethical community (De Schutter 2012b; 2014). Such an ideal should be realized by creating new identities alongside and *compatible* with existing ones, through liberal policies of 'cultural engineering' (De Schutter 2007). As a result, the transnationalization of social justice is realized via national pluralism. It should preferably be extended to the global level, though the short term aim should be the European level, given that the 'EU is the first plausible political project in history (De Schutter 2014, p. 56)'. If one accepts that the EU *can* function as a catalyst for extending social justice beyond national borders, and that there is more poverty outside the EU than inside its borders, one should adopt the continuity approach's stance to argue in favor of GJ via ESJ (De Schutter 2012b). Before the evaluation of the argument, let me first point to its two internal tensions, namely (a) the compatibility of identity layers; and (b) the tension between the short term and long term implications.

- a. In theory, the identity layers can be compatible with each other, but what does that really mean? It means that the different layers, subnational, national, European and Global layers should *differ without being incompatible*. The following conditions are necessary for their difference: (1) In order to differ from each other, it is evident that they have to embrace different sets of norms and values; (2) They will inevitably be exclusive towards each other in rejecting some values of the other. Exclusion can be problematic if the layers are not compatible. As will be argued in the last section, the only way that the EU identity layer can be compatible with a global one is when the '*concern for the international problems*

¹⁰ Social engineering stands for nation-building efforts.

originates in the set of European values'. The implication for national pluralism is that this condition should be taken seriously in promoting European nation-building policies. It is, however, uncertain whether De Schutter agrees with such a position. On the one hand, he conceives of the EU as a political project which can further GJ, but on the other hand he also takes it to be not all inclusive in spatial terms, specifically with respect to non- Europeans (De Schutter and Tinnevelt 2008, p. 128). One might consider such an exclusion to be unproblematic *in itself*, but it certainly poses a challenge when the necessity of inclusion is related to a serious concern for GJ. In other words, an unquestioned exclusion threatens these others instances that require inclusion for the sake of GJ, therefore each instance should be subject to the normative scrutiny with an eye for the compatibility of European and global levels.

- b. There also is a trade-off in the argument. The ESJ is favored not because its *short term* consequence would result in helping the less affluent European countries, which correspond to the "well-off poor" at the global level (De Schutter 2014, p.61). Rather, the short term European ethical partialism is tolerated for its *long term* aim which is to approximate GJ.

Referring back to the evaluation criteria for transitional justice from ESJ to GJ, the identity-related argument ranks high on the *feasibility* criteria. It accepts the laboratory argument and complements it by arguing for the new European and global identity layers. It fulfills the requirements of Rawls' priority rules favoring *good governance*, which the EU promotes through its enlargement policies. It is, however, problematic in terms of the criterion of *approximation* to the ideal of GJ. This is due to the fact that if indeed a European Mega Welfare state will be established, it is necessary but not sufficient as an argument to think that the extension of the moral community will still be desired or made to include the global level. The link is of course always contingent, but if the theory takes it for granted, as the identity-related argument does, then, it runs the risk of simply resulting in a larger level moral partialism, which does not help to approximate GJ, which therefore contradicts the impartial cosmopolitanism with which the theory started.

4 The Discontinuity Approach

The general assumption of the discontinuity approach is that the achievement of ESJ cannot be taken as naturally compatible with GJ. It has incompatibilities which should be tamed if the EU wants to be perceived as a cosmopolitan project. Therefore, the achievement of ESJ, as it is now, is rather a deviation from the ideal of GJ. This section will *first* examine the institutional and identity-related arguments, and *subsequently* evaluate them according to the criteria of transitional justice.

4.1 Institutional Arguments

Thomas Pogge considers the achievement of GJ as a 'duty of justice' rather than a 'moral duty' to relieve need, in the sense of charity. The former is based on a logic of responsibility, the latter on voluntarism. Such a responsibility is in place because: (1) the global economic system has similar qualities to Rawls' 'basic structure'; and thus is subject to (2) critical evaluation in terms of whether or not it promotes 'procedurally fair rules' for every world state that it affects (Pogge 1989). *Given*

1, Rawls' difference principle should be applied globally. Given 2, if the rules of the structure turn out to be unfair, that means that the global economic system is an 'exploitative system'.

In Pogge's view, the international economic system is disproportionately shaped by affluent states pursuing their own interests, often unconcerned by the harmful effects of that system on developing countries. This is because greater economic power is transformed easily into greater political power. Let me call this the

'harmful bargaining power' argument. What does this argument mean for EU integration? Pogge considers the EU as a political actor which is more blameworthy for harmful policies than its member states taken individually; through the EU, these latter have achieved a higher bargaining power to put forward their interests and shape the international economic system.¹¹ This means, then, that the 'harmful bargaining power' is transformed into 'cooperative harmful bargaining power' by virtue of the EU and is *multiplied* through cooperation. In such a system, the existence of the EU is considered to be negative and the deepening of its integration threatens to increase the harm it can do to global interests. Therefore, to achieve GJ, one should not first achieve ESJ. As he directly addresses the issue during an interview:

"It would be dystopian if people in Europe began to think of themselves only as Europeans and hunkered down in defense against anything outside the borders of the EU. Global inequalities would only grow... We can already witness a defensive European position, especially in the realm of economic policy. Internationally, the EU is a prime driver of inequality. If you look at supra-national policies, Europe pursues its collective interests and has forced developing countries to accept intellectual property rights that mainly serve the European nations... It would be good if the EU understood itself as part of a multi-layered global system that culminates in true global rules and organizations like the WTO and the UN, and whose aim it is to foster global justice (We must be opportunistic, 2011)."

Pogge demonstrates European 'cooperative harmful bargaining power' by analyzing its impact on international trade rules. In recent years, the EU defended the Trade-related Aspects of International Property Rights (TRIPS) within the WTO framework. Such a position, according to him, is particularly harmful for the global poor. These agreements prevent the global poor from having access to advanced medicines (1) by establishing monopoly patents which last 20 years and result in a 10- to 15-fold price increase; and also (2) by discouraging the pharmaceutical sector to focus on the health problems faced by the global poor (Pogge 2010, p.21). The result is millions of deaths among the global poor. A brief study of international property rights gives an idea of the importance that the EU accords to the subject. Indeed, international property rights (IPR) are considered as 'crucial' for the 'EU's competition capacity in the global economy (European Commission 2014)'. As the European Commission (2014) declared, the 'EU's growth and jobs are hampered when our [EU's] ideas, brands and products are pirated and counterfeited'. Moreover, the emphasis on IPR also constitutes part of the Europe 2020 growth strategy, which promotes IPR under the label of 'Innovation Union (European Commission, 2011).

¹¹ The "multiplicative" cooperation of causal factors thus not merely fails to decrease, but increases total responsibility. This is analogous to how two criminals, if each makes a necessary contribution to a homicide, are each legally and morally fully responsible for that single death (Pogge 2005, p.15).

Pogge's ideal of GJ, however, has evolved from an egalitarian concept to a sufficientarian concept (Zanetti 2005, Merle 2005), and this contradicts the 'cooperative harmful bargaining power argument'. In his early writings, he defended the application of Rawls' difference principle at the global level, claiming that without this, the inequalities would only rise and result in injustices (Pogge 1994, p.213). In his later writings, however, his position becomes more practical, where a minimal decent life is enough to judge the global economic system's fairness (Pogge 2002, pp.38-9). In order to criticize the 'cooperative harmful bargaining power argument' from within, the recent sufficiency-based position that Pogge does not focus on the increase of responsibility through cooperation, but rather on the EU's capacity to facilitate the world's poor access to the minimal standards, because otherwise, it inevitably has an egalitarian reference point.

When evaluated on the basis of the criteria of transitional justice, Pogge's argument passes the *good governance* test, as it considers the prevention of governmental corruption to be essential for the human rights of the global poor.¹² In arguing for the international application of the difference principle or minimal standards, there is no moral harm done, and therefore his position passes the *moral permissibility* test. When it comes to *feasibility*, however, it is not evident how his arguments are supposed to motivate political leaders and peoples living in more affluent parts of the world. The *approximation to the ideal* of GJ will depend on this motivation. As the continuity approach emphasized, global governance schemes are not as integrated as the EU, where the extension of social justice is more likely to happen in the short term. The EU is presented as negatively impacting GJ in itself via the analysis of the European position on TRIPS and IPR, but for such a generalization to be considered as representative in political scientific terms, Pogge needs to do a more comprehensive economic analysis of EU policies. However complex such an attempt might turn out to be, it could, indeed, permit the conclusion that the EU is harmful to GJ. In political scientific terms, the generalization, as it is now, disproportionately minimizes the justice-enhancing policies of the EU. Nevertheless, it is an important to show that there is not a direct compatibility between the self-interests of European policy and its external effects. This means that if the EU would dominantly have these harmful effects, the achievement of ESJ can be considered as a deviation from GJ.

4.2 The Identity-related Argument: Post-national Constellation

Jean-Marc Ferry did not argue for GJ, yet his defense on the establishment of ESJ as a new legitimacy for the EU is relevant. This is because he considers the EU as a cosmopolitan project, as a concretization of Kant's *perpetual peace* and Habermas' *post-national constellation* (Ferry 2005; 2010; 2012a). His main argument is that the ESJ should be developed through a European identity, which is inclusive and strictly political, promoting the EU as a juridical space encouraging world peace.

ESJ's defense is necessary as a new legitimization of the EU, considering that the historical ones, e.g. peace, prosperity, liberty, have already been achieved (Habermas 2001, p.8; Ferry 2010, p.11). Concretely, he defends that 'The northern EU member states should help the southern members' economic problems (Ferry 2012b)' for the EU to guard its legitimacy through taking 'control of the

¹² Unlike Rawls and Miller, Pogge holds that the responsibility for good governance does not fall only on the particular society at stake, but also on the global structure that supports corrupted governments.

economic globalization process and tame it by generating the political globalization (Ferry 2010, p.11)'. Achieving this target, however, should not make the EU an exclusive 'Welfare Fortress' towards the rest of the world, because its external legitimacy requires it to be an inclusive space.

According to Ferry, Europe should never become a nation – in the traditional sense of the term – and should remain an 'inclusive space (Ferry 2001)'. Moreover, he understands European democracy not 'primarily as a matter of relations that the EU engages vis-à-vis its citizens but [in agreement with the post-national understanding of the term] as a matter of relations of inclusivity engaged by the EU towards its periphery (Ferry 2001, pp. 17-8)'. In that sense, contrary to the liberal nationalist approach, Europe is defined as a 'juridical structure', as a 'free federation of nation states', constituting a *political* space, distinct from a *historical* space. It is because the historical culture of the EU has given rise to the contemporary character of the 'political Europe' where the social cohesion between citizens is based on both: (1) the affiliation that they would have *vis-à-vis* the political values expressed in the post-national constitution of the EU; and (2) the 'confrontational consensus' according to which a new public space is formed through public discussion, based on the notion of 'the recognition of the self in the other'.

To summarize, according to Ferry, in order for the EU to stay sensitive to the global issues, it has to promote a post-national identity based on political values. Then both the European Neighborhood Policy, as well as the power of the promise of candidacy are essential for the EU's contribution to GJ. Such an argument fulfills the requirements of the three criteria of justice: *moral permissibility*, *good governance* and *feasibility*. It is, however, not evident whether the political and juridical integration is solid enough to generate further support for solidarity beyond national borders - and indeed liberal nationalists argued that this was not the case. The argument also promotes an inter-state solidarity. Its weakness, then, is situated in that it does not constitute an *approximation to the ideal* of GJ.

5 A Pareto Optimal Continuity

In this section, I will propose a 'pareto optimal' way of proceeding by introducing the 'compatibility proviso' to strengthen the continuity approach's position. The pareto optimality aims to achieve 'more along one dimension without losing anything along any other (Goodin 1995, p.46)'. Pareto optimality aims to make the link between the European and global levels more likely, because it is evident that no philosophical argument can 'guarantee' such a passage but neither can philosophers disregard its contingency. My argument can be summarized as follows: by establishing ESJ in compatibility with GJ, the EU, considering its privileged international bargaining power, can become an important contributor to GJ.

5.1 A Pareto Optimal Continuity

Locke considered acquiring parts of the external world to be 'just' to the extent that there be 'enough and as good left in common for others (Locke 1924[1689], p.128)'. Similarly, the *EU's integration should continue in the form of ESJ to the extent that its implications do not harm the external world*. I suggest that the harm should be defined broadly to include: (1) a consequentialist

form of responsibility necessary to take the complex interdependence of the global context into consideration; as well as (2) a fostering of the EU's sensitivity to global issues.

For the consequentialist understanding of responsibility to hold, it is essential to pay attention to 'the harmful non-intended side-effects of a certain policy' that the EU might have introduced. It is close to Miller's (2007, p.100) understanding of outcome responsibility: 'A also can be outcome responsible for P's condition, without being morally responsible, say, as a side effect of certain of his actions having a harming effect on P, so long as the outcome is not due to P's negligence'. Unlike Miller, I think that P's (standing for developing countries) responsibility should be understood in rather narrow terms, considering their limited capacity. The Common Agricultural Policy (CAP) is a good example of such harm. Without intending to do so, the EU nonetheless ends up harming developing countries by limiting its agricultural import from them. Developing states often do not have the means to diversify their economy in the short term, whereas the EU has the means to change its policies for the sake of not harming them. Therefore, as a matter of outcome responsibility, the EU should adapt its policy to make it compatible with GJ. Nevertheless, such an understanding of responsibility requires an overarching empirical analysis of the EU integration's international impact. There are at least two ways that such an analysis can be conducted in political science. One would be to set a baseline on a comparative study of the cumulative impacts of the EU 15 before and after the Maastricht Treaty. Another consists in making a comparative study of the EU policies in the last two decades on their positive and negative impacts. Both would be done in order to arrive at an overarching conclusion. The results might be different or even contradictory. This paper, however, cannot settle these empirical issues and at any rate they do not prevent the theoretical argument from being valid independently of them.

The second condition for the proviso concerns the public culture within the EU, leading its citizens to conceive Europe as a globally sensitive and inclusive space. If not, ESJ will only create a new obstacle for GJ, similar to the one created by the nation-state before ESJ. An analogy can be made to the appearance of the nation-state in 18th century. After the French Revolution, the *Nouveau Régime* was 'searching for the public support for its survival (Van Parijs and Rawls 2003, p.10)', within a hierarchically and territorially fragmented society. Such a support and equality among the divided citizens required, according to Barère and Grégoire –two *hommes d'Etats* of the revolution– the unification of the language. Rapport Barère (1794[1794], pp.291-9) and Grégoire (1794[1794], pp.300-17) explained why this is the case. It is evident that they were in favor of the extension of social justice beyond borders. For that to happen, however, people needed to identify with each other, and this was simply impossible where *patois* persisted in being spoken among many. Once French was universalized – despite an assimilation process that is indefensible in liberal terms– it has extended social justice further than feudal entities. And today, it is the nation-state, created by this historical process, which is an obstacle to its enlargement to the larger levels. This is therefore a history lesson for the continuity approach, suggesting that it might also happen at the EU level.

5.2 The European Way of Life as a Normative Ideal

Pareto optimality not only strengthens the continuity approach's stance, but is also in line with the political development of European integration in the last two decades. Carens made the shortcomings of thinking in terms of the ideal theory explicit: 'an analysis of existing practice may

draw our attention to relevant moral considerations that we would overlook if we began from a purely theoretical position (Carens 2013, p. 90)'. Considering the compatibility proviso has existed as a policy aim of the EU since the Maastricht Treaty (Article 208) and developed under the label of '*coherence policy for development (CPD)*', such a disregard certainly characterizes the political theorists analyzed above. The CPD has been reinforced since then, and reformulated as follows:

"Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries (Art. 208§2)".

The EU created the Directorate General for Development and Cooperation (EuropeAid) charged by the CPD in 2011. Development cooperation is not a side issue for the EU but rather constitutes its external legitimacy as a political project.¹³ Moreover, policy coherence is a way for the EU to set guidelines for its member-states to bring about GJ.¹⁴ Last but not least, in being the donor of more than half of the development cooperation contributions, the EU is the greatest contributor to GJ (European Commission 2014, p.10).

Insofar as Europe will continue to strengthen social justice through establishing ESJ, and assuring compatibility with the global level, it can act as a role model for other world states, or international organizations on how to behave more responsibly. Habermas (2001, p.9) considers the welfare state policies that were historically developed in Europe as the backbone of European society, a particular ethos – a European way of life– incompatible with the neoliberal vision. Considering the EU bargaining power on the international scene and its capacity to concretize big institutional steps towards the establishment of GJ, the *continuity* approach is more plausible than the discontinuity approach. In what follows, I will briefly explain how this argument strengthens the continuity approach's position and then conclude by answering one possible objection from the discontinuity approach.

Continuity approach's analysis was insufficient to approximate the ideal of GJ, because there was no argument in particular which dealt with the possibility of a break at the ESJ. This implies two issues related to shared responsibility and ethical partialism. I will demonstrate them via the institutional argument of the continuity approach. Van Parijs sets GJ as an ideal to achieve, even though he considers making a choice between the European and global poor a 'cruel dilemma', he argues for ESJ as a first step. In so doing, urgent global issues are disregarded. I believe the reason for such a choice is because he is convinced that without protection, the legitimacy of the welfare state policies cannot be sustainable. By not reasonably guaranteeing the transition from the first to the second step, his stance gives way to three critiques made by Ingrid Robeyns in *Ideal Theory in*

¹³ 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (Article 21§1 Lisbon Treaty)'.

¹⁴ Article 23 of the European Consensus on Development, a joint statement sets a level of development contribution to which the member states should comply as follows: 'The EU has adopted a timetable for Member States to achieve 0,7 % of GNI by 2015, with an intermediate collective target of 0,56 % by 2010 , and calls on partners to follow this lead. These commitments should see annual EU aid double to over EUR 66 billion in 2010 (European Consensus, 2006)'.

Theory and Practice. The first is to say that by taking this path, Van Parijs seems to end up making a *bad idealization* by 'ignoring the existence of certain forms of injustice [the urgency of the global issues] that need to be theorized rather than simply ignored in theorizing (Robeyns 2008, p. 358)'. Robeyns considers such idealizations to be *ethically partialist* because, as she puts it, 'Often this amounts to leaning out aspects of life that are more relevant to some groups in society than for others (Robeyns 2008, p. 358)'. As a last critique, if used as a policy recommendation, the idea of a *Fortress Europe* risks having controversial implications, because the transition to GJ is not reasonably assured and it entails some 'shared responsibility (Robeyns 2008, p. 360)' when the ideal is not achieved. By this I mean that, if indeed, Van Parijs' recommendation to achieve GJ is taken into consideration for application but no transition from ESJ to GJ occurs, then, according to Robeyns, he has a shared responsibility for such an outcome by having inspired the policy decisions. This is because, the argument heavily depends on the transition for its moral justification. Even though such a transition might not happen for many reasons in spite of even perfectly formed philosophical arguments, we expect from a normative theory to give transitionally just recommendations approximating the ideal. In setting the compatibility proviso, we adjust these three implications, in guaranteeing that even though the transition might still not happen, at least there is no harm related to ethical partialism in favor of the well-off European poor rather than the global poor. Also, by requiring European public culture to remain sensitive to the global issues, it is more likely that European peoples might desire to head towards GJ after having established ESJ, whereas this is rather unlikely in a European public culture where the rest of the world is perceived as a potential 'welfare tourist'.

A potential objection to such an argument can come from Pogge in terms of the hypothetical comparison that the argument includes an emphasis on the EU as the greatest contributor to international development. He might say that: 'to make sure that the world might be better off with the EU's contribution to the development still does not mean that the rights in question are fully protected'. This objection is quite appropriate, however, without an actual agent taking charge of the issues at hand, to internally and externally lead others under the banner of world amelioration, the world risks becoming worse a place than it might have been otherwise.¹⁵ Moreover, Europe, despite the financial crisis, historically has the necessary public culture which gave way to a certain way of life in which egalitarianism is valuable. It has the sensitivity to develop egalitarianism further and make it plausible at a global level.

My main aim of having introduced such a non-ideal path to achieve ESJ as well as GJ is to make the efforts in favor of furthering social justice beyond national borders 'pareto optimal'. Even in the worst case scenario – in which the transition, although reasonably guaranteed, will still not happen – then at least the normative theory is evaluated in its entirety with its three components: (1) the normative ideal, (2) with the designed non-ideal path, as well as (3) its unexpected policy implementation effects.

¹⁵ David Miller highlighted the importance of the assignment of a certain duty to an agent as a separate issue from the identification of the problem as a duty (Miller 2007, p.84).

6 Conclusion

Contemporary normative political philosophy witnessed the intensification of the social justice debate beyond national borders. Starting from the premises recognizing 'the value of social justice' and 'desirability of its extension beyond national borders', the paper raised a new philosophical question on the potential effects of the establishment of ESJ on GJ. It applied the ideal/non-ideal theory discussion to the subject of social justice and identified the criteria of transitional justice in order to evaluate different arguments made in favor of GJ.

This paper sided with the continuity approach while proposing the compatibility proviso: the EU's integration is encouraging for GJ to the extent that its implications, understood from a consequentialist responsibility perspective, does not harm the outside world. As such, it implied that EU citizens remain sensitive to global issues, not only for the compatibility proviso to be politically supported in the short term, but also to reasonably facilitate the link between the establishment of ESJ and GJ in the *long term*. The greatest shortcoming of the continuity approach has been the potential risk that the extension of social justice could stop after the establishment of ESJ. The compatibility proviso, being a theoretical argument, cannot empirically guarantee such a link, but the changes it advises can facilitate and encourage it. In the worst case scenario, if the achievement of GJ still fails, the particular advantage of holding this position is that establishing the compatibility clause helps to avoid the potential risks related to the continuity approach: 'bad idealizations', 'shared responsibility as a normative thinker', 'ethical partialism' or 'creating another set-back before the furthering of social justice'.

The picture that has been drawn here of the existing literature in political theory certainly is not the only imaginable picture of a non-ideal theory for achieving GJ. A different one could defend a different graduality in which two ideals can be first partially achieved on a 'sufficiency' basis and then strengthened into an 'egalitarian' conception. My hope is that the paper would constitute a source of inspiration for others to reflect on different probabilities in non-ideal theory to achieve GJ in its relation to the social justice debate in Europe.

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