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Solidarity through redistribution and insurance of incomes: the EU as Support, Guide, Guarantor or Provider?

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Abstract

Income redistribution and insurance are core functions of welfare states. What role should the EU play in this domain? I examine the purchase of normative theorizing on social justice on this question, building on the contrast between three models of EU involvement: the EU as *Support*, which implies the sharing of resources through intergovernmental transfers; the EU as *Provider*, which implies EU cross-border transfers towards individual citizens; the EU as *Guide* or *Guarantor*, which implies that the EU formulates normative policy ideals.

I review different normative accounts of justice for the EU (Ronzoni, Viehoff, Sangiovanni, Van Parijs), and how they bear on the choice between these models of EU involvement in welfare state solidarity. These accounts evolve between two extreme positions. On the one hand, an account based on supranational justice as ‘background justice for nation states’ implies that the EU should be a mere instrument in the hands of its member states. The opposite extreme position is that EU should be a laboratory for international distributive justice, whereby national welfare states are demoted to the toolbox of instruments. I argue that an account of justice for the EU must search for a middle ground, whereby neither the national welfare states nor the EU are demoted to mere instruments.

I conclude that the EU should support the member states’ welfare states in some of their key functions, on the basis of common social standards and in pursuit of upward convergence. Such a ‘Social Union’ would be a *Support*, *Guide* and *Guarantor*, both in the realm of insurance and redistribution. Through the establishment of interstate insurance, it would be a true ‘insurance union’, but, from the point of view of individual citizens, it would not become a direct *Provider* of insurance. It would engage in interstate redistribution, but not in interpersonal cross-border redistribution.

Keywords: insurance, redistribution, European Union, solidarity, European Social Union, Social Europe, basic income, global justice

Introduction

The redistribution of incomes from rich to poor and the insurance of incomes in the case of unemployment, retirement or illness are longstanding and core functions of national welfare states. Nation states cherish their sovereignty in these sensitive areas. However, through the coordination of social security entitlements for mobile European citizens and the legal enforcement of principles of non-discrimination, the European Union (EU) plays a role in this domain which is far from trivial. Since the launching of the Open Method of Coordination (OMC) on social inclusion, the EU is also committed to offering *cognitive support* and *guidance* to its member states in the fight against poverty.¹ It is already a *residual provider* in the realm of social assistance, albeit in a very marginal way, via the European Fund for Aid to the Most Deprived.² Is there a normative case, based on arguments of social justice, for the EU to play a role in the redistribution and insurance of incomes that goes beyond this *acquis*? In the ongoing debates on the EU's social dimension, there is an array of proposals to that effect. A European Directive on minimum income protection that would force all member states to improve the income situation of the poor in their own country, is a well-known proposal to go beyond the existing model of cognitive support and soft guidance: the EU's role would thereby shift towards being a *guarantor* of domestic redistribution.³ Some scholars argue that the EU should organize transnational interpersonal income redistribution and thus become itself a key *provider* of redistribution: a pan-European basic income should be established.⁴ For yet other participants in these debates, the first priority should be the development of European-wide risk sharing, for instance by means of a Eurozone-level re-insurance of national unemployment insurance schemes, providing budgetary assistance to national systems when they are in need. In such a scenario the EU's role might, in principle, be limited to being a background *support* of national insurance systems, but it nevertheless involves the material organization of solidarity at the EU level. The organization of a genuine pan-European unemployment benefit scheme has also been proposed, whereby the EU becomes a direct provider of

¹ M. Daly, The dynamics of European Union Social Policy, in: P. Kennett and N. Lendvai-Bainton (eds.), *Handbook of European Social Policy*, Cheltenham: Edward Elgar Publishing, pp. 93-107.

² J. Greiss, B. Cantillon, T. Penne, S. Marchal, *Europe as agent that fills the gaps ? The case of FEAD*, WP19/03, Herman Deleeck Centre for Social Policy, 2019.

³ See the reports produced by the European Minimum Income Network (www.emin-eu.net) and their references to earlier proposals by the European Anti-Poverty Network (EAPN); see also B. Cantillon, B., The European Pillar of Social Rights: ten arguments for prioritising principle 14 on minimum incomes, in: M. Ferrera (ed.), *Towards a European Social Union. The European Pillar of Social Rights and the Roadmap for a fully-fledged Social Union* A Forum debate, Torino, Centro Einaudi, 2019 (www.euvisions.eu), pp. 54-63.

⁴ P. Van Parijs and Y. Vanderborght, *Basic Income. A Radical Proposal for a Free Society and a Sane Economy*, Cambridge Mass.: Harvard University Press, 2017.

insurance.⁵ Finally, some scholars emphasize the need to curtail tax competition, since this undermines the capacity of national governments to maintain fair and adequate funding for their welfare states: what is proposed is not European solidarity whereby resources are shared, but *regulatory support* for national solidarity.⁶

This short survey suffices to illustrate the different roles the EU might play with regard to welfare state solidarity: it can act as a cognitive support, a regulatory support, a material support, a guide, a guarantor, a provider...⁷ In this paper, I focus on the contrast between three models of EU involvement: the EU as material *Support*, which implies the sharing of resources across borders by means of intergovernmental transfers; the EU as *Provider*, which implies cross-border transfers towards individual citizens, organized by the EU; the EU as *Guide* or *Guarantor*, which implies that the EU formulates normative ideals for policies in the realm of redistribution and/or insurance (in a soft way, and towards national policy-makers, when it acts as a *Guide*; in a more binding way, and speaking directly to individual citizens, when it acts as a *Guarantor*). I will not elaborate on the exact definition of ‘guarantees’, nor on the distinction between the *Guide* and *Guarantor* model – and the continuum of possible models in between – however important this distinction is for discussions about the EU’s role in social policy.⁸

⁵ F. Vandenbroucke, The European Pillar of Social Rights: from promise to delivery, in: M. Ferrera (ed.), *op. cit.*, pp. 2-11; and F. Vandenbroucke, The new European Commission must convince citizens that the Pillar is alive and kicking, in: M. Ferrera (ed.), *op. cit.*, pp. 169-176.

⁶ W. Schelkle, The way ahead for a European Social Union? Let’s focus on political citizenship and taxation, in: M. Ferrera (ed.), *op. cit.*, pp. 157-159.

⁷ My typology of the different roles the EU might play is inspired by and owes much to a typology proposed by Claassen, Gerbrandy, Princen and Segers (see R. Claassen, A. Gerbrandy, S. Princen, M. Segers, Four Models of Protecting Citizenship and Social Rights in Europe: Conclusions to the Special Issue ‘Rethinking the European Social Market Economy’, *Journal of Common Market Studies*, Vol. 57, No. 1, pp. 159-174, January 2019, pp. 159-174). There are two differences. First, what I describe as the ‘support’ model is congenial to what Claassen et al. coin the ‘Patron-of-nations’ model. However, in the ‘Patron-of-nations’ model the levels and shape of social protection arrangements are defined at the domestic level and EU *only* creates the conditions for member states to be able to bring their choices into effect; the EU does not interfere with those choices. In contrast, in this paper ‘support’ simply refers to a supportive role by the EU, which does not preclude interference by the EU in the definition of the shape and level of social protection arrangements. Second, although I cannot elaborate upon it in the context of this paper, it is necessary to make a distinction between the EU as a ‘guide’ for policies, and the EU as a ‘guarantor’ of social rights. The ‘guide/guarantor’ distinction encompasses two questions: one question about whether EU policies should speak to national policy-makers rather than to individual citizens; another question about the extent to which the EU’s ‘guidance’ should be reinforced by ‘harder’ guarantees, and what such guarantees imply (cf. next footnote).

⁸ Various World Bank reports assess social policy in Latin American countries through the lens of ‘social guarantees’: the ‘social guarantee’ framework is demanding; for instance, it has individual justiciable rights at its core. The EU recently started to use the expression ‘guarantee’ in a looser sense, for policy packages recommended to the Member States (cf. the Youth Guarantee, the Child Guarantee). How the concept ‘guarantee’ should be applied in the context of EU social policy needs careful thought, which is beyond the scope of this paper. I thank Francesco Corti for drawing my attention to these World Bank reports.

Support, Guide/Guarantor and *Provider* need not be mutually exclusive roles for the EU: quite on the contrary, they may be complementary and reinforce each other. However, it may also be the case that the normative views underpinning them are truly conflicting. Hence, my aim is to examine the purchase which normative theorizing on social justice has on the delineation of the role the EU should play. Admittedly, that purchase is limited, in the following sense: without taking into account geopolitical considerations that explain the historical point and purpose of the EU, a normative exploration of the EU's contemporary social mission lacks context and is bound to be a highly abstract exercise; it may even be difficult to bring it to a clear conclusion. Nevertheless, normative theorizing on justice is indispensable. It is also consequential with regard to alternative models of the EU's involvement in welfare state solidarity. For instance, against Viehoff, I will argue that prominent philosophical accounts of social justice in the EU do not converge in their prescriptions with regard to the EU's role in minimum income protection.⁹

Two proposals receive particular attention in this paper: a European unemployment re-insurance and a European basic income. The discussion on unemployment re-insurance highlights the limits of 'functional arguments': when pondering such a proposal, we are on a bridge between functional arguments (the monetary union needs fiscal stabilizers) and shared aspirations (adequate social protection is a shared aspiration of the member states). Appealing to shared aspirations requires a normative account (why is adequate social protection valuable?). I discuss basic income extensively because it is often presented as the most plausible proposal if the EU is to play a role as *Provider* in interpersonal income redistribution (since it is least intrusive w.r.t. the existing national tax- and benefit schemes). I will question the argument that basic income is a relatively non-intrusive proposal and its merits compared to an insurance approach. The upshot is that a pan-European basic income is an implausible project, except when one is convinced that any model of national welfare state solidarity must, at some point in time, include basic income.

My exploration of the various arguments suggests that the EU's mission is to become a European Social Union, i.e. a union that supports the member states' welfare states in some of their key functions, on the basis of common social standards and in pursuit of upward convergence. Such a union would be a (selective) *Support, Guide* and *Guarantor*, both in the realm of insurance and redistribution. Through the establishment of interstate insurance, it would be a true 'insurance union', but, from the point of view of individual citizens, it would not become a direct *Provider* of insurance. It would engage in interstate redistribution, but not in interpersonal cross-border redistribution. Thus, a European Social Union is about more than mere 'background

⁹ J. Viehoff, Maximum convergence on a just minimum: A pluralist justification for European Social Policy. *European Journal of Political Theory*, Vol. 16, Issue 2, pp. 164-187.

justice' (a conception of justice that emphasizes the need to secure the member states' 'real sovereignty'), but it would maintain subsidiarity as an organizing principle with regard to the ways and means of implementing welfare state solidarity.

Sections 1 and 2 of the paper define and discuss some key features of what I call 'welfare state solidarity'. Section 3 delineates the argumentation strategy of this paper. Sections 4, 5, 6 and 7 discuss the relevance of prominent theories of global justice, taking the notion of 'background justice' as a starting point. Section 8 returns to the questions set out in this introduction and highlights issues that remain unanswered; thus, it is an *envoi* rather than a firm and precise conclusion.

1. Welfare state solidarity

Welfare states combine different functions. They redistribute in various ways from better-off members of society to those faced with material or other deprivation or subject to higher social risks. They enable citizens to insure themselves against social hardship and to spread their income more securely over their lifetime. Next to redistribution and insurance, welfare states organize social investment, care and capacitating services: they develop the nation's human capital through education and training; they regulate and/or provide health care; and they also address so-called 'new social risks', which are not insurable on the basis of a traditional insurance logic, such as difficulties in the combination of paid work and family life or having to care for a frail relative.

A single instrument or program often serves more than one function. Public funding of compulsory education serves social investment but, compared to the counterfactual of private education, it also has an immediate redistributive impact. The same holds for child care, and many other services. Traditional social security systems often mix up insurance and redistribution in one and the same scheme. A well-known reason for mixing insurance and redistribution is related to asymmetric information about individual risk profiles: when risk profiles differ, asymmetric information can lead to adverse selection, which makes private insurance suboptimal or even impossible. The compulsory pooling of risks can increase aggregate welfare; in principle, it can even allow a Pareto-improvement, whereby every individual wins.¹⁰ Risk pooling implies redistribution across risk profiles: people with low risks subsidize people with high

¹⁰ The claim that compulsory risk pooling leads to a Pareto-improvement is stronger than the claim that it enhances economic efficiency and thus increases aggregate welfare. For a graphical exposition of a model illustrating Pareto-improvement with compulsory risk pooling, see N. Barr, *Economics of the welfare state* (5th ed.). New York: Oxford University Press, 2012, pp. 111-112. Whether or not compulsory risk pooling leads to (i) a welfare gain and (ii) a Pareto-improvement, depends on assumptions w.r.t. the contracts on offer and the environment in which risk pooling is applied (including among others, the impact of heterogeneity in preferences over risks); see N. Chetty and A.M. Finkelstein, Social Insurance: Connecting Theory to Data, *Handbook of Public Economics*, Elsevier, 2013, pp. 111–193, and literature cited therein.

risks; without such redistribution, individuals with low risks may lack an adequate insurance scheme and be less well-off themselves. In addition, social security benefits can be redistributive across income categories because of minima and maxima that apply to the benefits. Social policy scholars sometimes argue that this mix is what creates the true cement of national welfare states.

More generally, the overall performance, the resilience and the public legitimacy of national welfare states crucially depend on the way in which complementarities across these functions are organized. The positive impacts of income redistribution, insurance, social investment, care and capacitating services reinforce each other. However, from a European perspective, these functions might be separated; or, to formulate it more cautiously, *prima facie*, it seems conceivable to separate those functions when we discuss the social agenda of the EU: we might design European instruments that engage specifically – and separately – with (monetary) income redistribution and income insurance. Thus, the EU might be selective with regard to the welfare state functions it takes part in. Whether or not it is really possible to disentangle welfare state functions at the level of EU policies is a question to which I will return when wrapping up the argument.

I use ‘welfare state solidarity’ as an umbrella concept for redistribution and insurance. The qualifier ‘welfare state solidarity’ differentiates it from broader notions of solidarity. Welfare state solidarity means that *resources are shared with the aim of compensating individuals for (disadvantageous) circumstances for which they are not held responsible*. In this definition, the ‘responsibility-cut’ (the boundary between individual and collective responsibility) refers to an explicit or implicit social contract that transpires in the praxis we are describing; the responsibility-cut does not imply a normative judgment and it is, *a fortiori*, not based on metaphysical ‘truths’ about responsibility. Also, citizens’ motivations for solidarity (e.g. self-interest, feelings of community and moral obligation....) are a separate issue. In other words, I want to make a clear distinction between (i) the definition of welfare state solidarity, (ii) citizens’ motivations for supporting welfare state solidarity, and (iii) normative judgements about the extent to which solidarity serves social justice.¹¹ This thin definition of

¹¹ The expression ‘solidarity’ has a narrow scope in this paper: important praxes of solidarity exist outside the domain of social insurance and income redistribution; they might need a broader or even slightly different definition. Definitions of solidarity often refer to the foundational motives for solidarity and make these motives an integral part of the definition (claiming, for instance, that sharing of resources cannot be ‘solidarity’ if the motivation is based on self-interest or stability). This conflates different aspects of the solidarity problematic that should be kept apart (cf. J. Gerhards, H. Lengfeld, Z.S. Ignácz, F. Kley, and M. Priem, *European Solidarity in Times of Crisis. Insights from a Thirteen-Country Survey*. London: Routledge, 2019, p. 19-20). My definition deliberately entertains a distinction between (i) the generic description of the praxis (which can be institutionalized, i.e. be non-voluntary; for the purpose of this paper ‘solidarity’ as a short-cut refers both to praxes and institutions), (ii) the motives and causes of this praxis (or the motives for supporting the institutions embodying the praxis), and (iii) the normative judgment as to whether the praxis (or the institution embodying it) satisfies demands of social justice.

solidarity highlights an important feature of welfare states: depending on the circumstances for which individuals are not held responsible, insurance and redistribution are two distinct types of welfare state solidarity.

Insurance is, by definition, about future risks. Pure insurance means that individuals are compensated for risks that cannot be foreseen at the level of the individuals, but can reasonably be calculated at the level of a group of individuals with identical risk profiles. In practical terms, since individual risk profiles are identical, the expected net present value of benefits cashed out by a pure insurance mechanism is, for all individuals, equal to the net present value of their contribution to the scheme. In other words, in a pure insurance scheme, the *ex ante* expectation is that, over a sufficiently long time span, there are no 'net beneficiaries' and no 'net contributors' in money terms; in welfare terms, there are gains for everybody.

Welfare state solidarity takes the form of redistribution when the 'circumstances' for which we do not hold individuals responsible refer to individual characteristics rather than future risks. The prime example of redistribution is progressive taxation. Suppose we agree, *qua* social contract, that differences in individual income are, partly, the result of factors for which we do not want to hold citizens responsible, such as the talents with which they were born, the way in which they were educated by their parents, their family's network, ... Progressive taxation organizes solidarity on the basis of this social contract: it's key *rationale* is to compensate for disadvantages linked to those individual circumstances.¹² In terms of the motivation of the participating individuals, redistribution is often seen as a more 'demanding' form of solidarity than insurance. Well-organised insurance can be understood as a matter of enlightened self-interest for a large majority of the insured: the expectation is that, in the end, a large majority wins (in the ideal-type case of a Pareto-improvement, even everybody wins). In contrast, redistribution is, *prima facie*, not a matter of enlightened self-interest. However, as already indicated above, in order to implement insurance in a world of heterogeneous risk profiles and asymmetric information, it can be necessary to organize compulsory risk pooling, which means that redistribution is organized from people with low risks to people with high risk. Complying with such redistribution across risks then becomes also a matter of self-interest. Or, to be more precise: if different risk profiles are a 'circumstance' for which we do not hold people responsible, the *principle* of risk pooling can be as much a matter of expediency and self-interest as it is a matter of redistributive justice.

¹² I write 'key rationale', because progressive taxation also has an insurance component. Think about the (unforeseeable) risk affecting workers' income associated with economic shocks. Progressive taxation reduces the impact of such economic shocks, across time and sectors of activity. Consider two self-employed working in two different economic sectors: if one sector is hit severely by an economic downturn, whilst the other sector is not, progressive taxation functions as an insurance device between them.

Throughout this paper, I will use ‘solidarity’ as a short-cut for practices that can be interpreted by means of this framework. One should make a distinction between the description of solidarity as a praxis, and its assessment in terms of justice. However, the reader easily recognizes the vocabulary and grammar of a strand of egalitarian political philosophy, which has been coined ‘responsibility-sensitive egalitarian justice’, or, ‘equality of opportunity’:¹³ solidarity, so conceived, serves the objectives of egalitarian justice. Obviously, what egalitarian justice and solidarity as its vehicle exactly mean needs specification: the generic concept of ‘responsibility-sensitive egalitarian justice’ is flexible; from the perspective of social justice the crucial question is how the ‘responsibility cut’ is understood, what its moral foundation is, and where it is located. Because of its flexibility as a conceptual framework, the normative lens provided by responsibility-sensitive egalitarian justice is a useful heuristic for social-policy makers, who constantly have to engage with the consequences of risks, circumstances and choice; but whether we *accept* it as the normative foundation for social policy obviously depends on its further specification. This is an important *caveat*. There is a second *caveat*. My use of this vocabulary and my reference to responsibility-sensitive egalitarian justice does not imply that I think that this particular strand of theorizing about social justice covers, from a normative perspective, *all* the functions of contemporary welfare states or all the dimensions of those functions.¹⁴ But it covers the essence of what we want to examine here. This flexible framework has an additional advantage: its vocabulary and grammar is normally applied to relationships between individuals but it can be extended to relationships between states. This may be useful when pondering justice between EU member states.

Thus, the definition of solidarity used in this paper is narrow, also when it applies to the EU. For instance, a European regulation on corporate taxation to pre-empt a downward spiral of tax competition by setting minimum standards for the member states’ tax systems, would support the capacity of the member states to diversify the funding of their welfare states in a fair way, and thus buttress social policies. Since it would solve a collective action problem, one may use the word ‘solidarity’ to describe this. However, such a regulation does not fall under the heading of ‘European solidarity’ as defined here, since no resources are shared across borders. In general, it is better to use thin concepts rather than thick concepts, but, moreover, in the EU context the distinction between pan-European regulation and cross-border transfers is important.

¹³ The work of G.A. Cohen and R. Dworkin provides the key references for this strand of theorizing on justice.

¹⁴ For instance, the practice of minimum income protection – and notably social assistance – is also based on principles of compassion and protection of vulnerability, in which personal responsibility does not play a role.

2. Three preliminary observations on welfare state solidarity

Before exploring the role of solidarity at the EU level, three observations on welfare state solidarity are useful. The first observation concerns the aims of insurance and redistribution in welfare states. Well-organized unemployment insurance and progressive income taxation not only serve justice, they also function as automatic stabilizers that smooth the business cycle.¹⁵ *Stability* (or, avoiding too much instability) is more than a matter of redistributive justice: stability creates the right background conditions for many aspects of the social and economic well-being of citizens in nation states. It is possible to extrapolate that argument to the international level: stability is an international background condition for flourishing welfare states. Rather than interpreting risk sharing across nations (e.g. Eurozone-level unemployment insurance) as a matter of justice, such risk sharing can be understood as the solution to a collective action problem that leads to the under-provision of the ‘good’ of stability. If stability is the *rationale* for risk sharing and valuable *per se*, one should not be overzealous with regard to the problem of moral hazard, that is, the worry that some insured parties might be compensated for conditions that are not completely ‘beyond their control’. More generally, when setting up risk-sharing mechanisms, the location of the ‘responsibility-cut’ – which is in my view based on a social contract, not on metaphysical ‘truths’ about responsibility – must be informed by what risk sharing aims *to achieve*.

The second observation is about diversity and insurance. In a fascinating account of the European Monetary Union and the monetary solidarity it creates through risk sharing, Schelkle argues that that the benefits of international risk sharing *increase* with the diversity of the countries that participate in it. She claims not only that there are no limits as to how much economic diversity can be accommodated by the monetary union (only political limits exist), but, moreover, that “diversity has to be fostered rather than eliminated”. The upshot of that argument is that monetary solidarity does not necessarily require ‘ever closing union’, meaning ever more integration and centralized policy capacity. Schelkle’s claim seems to conflate two different aspects of what she calls ‘diversity’: one aspect is the degree of correlation of the risk across the parties that are insured, another aspect is the heterogeneity versus the homogeneity of the risk profile of the insured parties. We have to disentangle those aspects of the insurance problematic. We should also make a clear distinction between an empirical argument about the welfare interests of the insured parties and a normative argument.

Consider first the interest-based arguments. Insurance has no added value if the correlation of the risk across the parties is high: by definition, risk pooling presupposes that risks are not correlated. This is one of the reasons why insurance typically works better in a large population than in a very small population. If ‘diversity’ means ‘weak

¹⁵ This relates to the fact that progressive taxation includes an insurance component, cf. footnote 13.

correlation', diversity is indeed beneficial. However, in a context of compulsory risk pooling, one cannot say that risk sharing is 'more beneficial' – from the point of view of the interest of the parties – when the risk *profiles* are more heterogeneous across the parties that seek insurance, e.g. when the risk inequality between 'low risk' people and 'high risk' people increases. Risk pooling implies a redistribution between low- and high-risk people: the low-risk people subsidize the insurance contract of the high-risk people. The consequence of more heterogeneity is that, *ceteris paribus*, the cross-subsidization between people with different risk profiles increases when their risks are pooled: compared with a situation without pooling, the low-risk people may still gain in welfare (without pooling, adverse selection can undermine the very possibility of setting up insurance); but compared to a context of more homogeneity in risk profiles, the low-risk people are, *ceteris paribus*, less well off. There is no calculus that allows to claim that more heterogeneity is overall, aggregating high- and low-risk people, beneficial in terms of the welfare interests of the insured parties.¹⁶

Obviously, the normative argument is different: if we deem people not responsible for their risk profile, and we therefore want to compensate them for this circumstance, then the heterogeneity of risk profiles *calls for* insurance (even when the risks are correlated). But this is not the argument made by Schelkle, when she writes that we should foster diversity in the monetary union.

The fact that cross-subsidization has to increase when risk inequality increases and risks are pooled, may also enhance public concern with moral hazard, notably in heterogeneous populations: if moral hazard is perceived as contributing to risk inequality (i.e. when high-risk people develop behaviour that further increases their risk, compared to the risk of other people), it is perceived as an illegitimate cause of cross-subsidization. The upshot of this argument is that risk sharing, for it to be accepted, may require a degree of convergence in features of 'behaviour' that are seen as limiting the incidence of the insured risk. The convergence that is called for has nothing to do with irrational political inclinations (as Schelkle has it), but everything to do with both the defence of material interests and conceptions of legitimate solidarity. In the context of the monetary union, the upshot is that, yes, risk sharing may presuppose a degree of convergence in some domestic policies, including in the domain of employment. I cannot pursue this argument in this paper, but it is one of the reasons why, below, I will say that monetary unification implies a basic consensus on some key features of the social models of the participating member states.¹⁷

¹⁶ This argument abstracts from differences in risk aversion, which further complicates the argument about diversity and the advantages of risk sharing; see Chetty and Finkelstein, *op cit*.

¹⁷ Both in terms of the way in which risks are covered by benefits and moral hazard is mitigated; see F. Vandenbroucke, *op. cit*. For a related discussion on the organization of unemployment insurance in the USA, see Chr. Luigjes, G. Fischer and F. Vandenbroucke, *The design of a European unemployment (re)insurance scheme: lessons from US experience*, ACES Working Paper, 2019/06.

My third observation on welfare state solidarity returns to Peter Baldwin's seminal work on the role of insurance in garnering support for welfare states.¹⁸ Notwithstanding (manageable) heterogeneity in risk profiles and concern with moral hazard, historically, the technique of insurance has allowed to create 'communities of risk', cross-cutting class-cleavages and generating stable constituencies for welfare state provision. Insurance is not only a safety net for existing communities of risk, but can also build such communities, as Schelkle notes.¹⁹ Can the EU, or the Monetary Union, become a 'community of risk' on the basis of insurance techniques? In this respect, it is important to underscore the following feature of insurance: although national social security schemes often mix up redistribution and insurance, under certain conditions it is possible to set up insurance schemes between rich and poor people or countries that offer adequate insurance for each, but do not redistribute between rich and poor. At the level of countries, this seems even less difficult than at the level of individuals.²⁰ Why is that feature of insurance interesting for our purpose? Suppose that, for some reason, large-scale between-country redistribution is difficult: by *separating* insurance and redistribution (in contrast to what has often been the case in national welfare states) a European 'community of risk' might become feasible, notwithstanding possible resistance against permanent redistribution between countries.²¹ This is not to say that at the interstate level the technique of insurance would have the same potential to create a true 'community of risk' as it did in national welfare states. But this observation invites

¹⁸ P. Baldwin, *The Politics of Social Solidarity*, Cambridge: Cambridge University Press, 1990. I am grateful to W. Schelkle who reminded me of Baldwin's work.

¹⁹ W. Schelkle, *Monetary solidarity and justice: what difference do these norms make to euro area reform*, paper presented at the conference 'Is Europe Unjust', Firenze 16-17 September 2019. Schelkle refers to D. Stone, *Beyond Moral Hazard: Insurance as Moral Opportunity*, *Connecticut Insurance Law Journal*, 6 (1), pp. 12-46. Stone identifies a number of such mechanisms: insurance creates new social standards of well-being; it changes the social meaning of problems, etcetera.

²⁰ At the level of individuals income and risk profiles often correlate. This is not necessarily the case at the level of countries. Consider an interstate insurance against severe economic shocks for a set of countries that are diverse with regard to their level of GDP and diverse with regard to their risk profile: if the risk profile is independent of the level of prosperity (i.e. rich and poor countries do not have a characteristically different risk profile when it comes to severe economic shocks), it is possible to set up a pure insurance scheme that supports countries hit by shocks, whereby both the contributions and the payouts are proportional to the countries' GDP. This is obviously a theoretical example, but it is possible to design interstate insurance policies that provide pure insurance and avoid redistribution (see below, the references to Carnot et al. for an example).

²¹ In the policy-making and political circles that discuss the idea of European unemployment (re)insurance, the possibility that such a scheme leads to a permanent redistribution between countries is considered a major stumbling block. However, a survey experiment on EU citizens' attitudes viz-à-viz cross-border risk-sharing in the domain of unemployment shows that citizens may be less exercised by the possibility of between-country redistribution than by the absence (or presence) of conditions with regard to activation and training policies attached to such a scheme. See F. Vandenbroucke, B. Burgoon, T. Kuhn, F. Nicoli, S. Sacchi, D. van der Duin, and S. Hegewald, *Risk Sharing When Unemployment Hits: How Policy Design Influences Citizen Support For European Unemployment Risk Sharing (EURS)*, AISSR Policy Report 1, 2018.

us to think about insurance as a self-standing strategy to enhance social justice in Europe.²²

These observations also explain why I consider collective insurance, even if it is ‘pure insurance’, an *instrument* of social justice, in contrast to a tendency to set insurance aside as merely ‘enlightened self-interest’ that does not address concerns of social justice proper. This underrates the role of insurance. Insurance not only improves welfare across the board, including the welfare of those who are, in other respects, worst off. More fundamentally, insurance can build communities and create new social standards of well-being.

3. The EU and welfare state solidarity: an argument in context

What role should the EU play in welfare state solidarity, beyond the different roles it now already assumes? Obviously, such a question needs context: the EU’s mission statement in the realm of welfare state solidarity cannot be formulated independently of other features of the EU, such as the single market, the monetary union, and freedom of movement. The EU not only impacts on welfare state solidarity via its technical coordination of social security, its anti-discrimination legislation and the various soft coordination processes that have been launched over the last 20 years. The single market, monetary unification, freedom of movement and the policies developed to sustain them – notably in the context of the European Semester – have had a huge impact on some, if not many, EU welfare states. Should there be a single market for goods, services and capital? Should there be monetary integration? Should there be freedom of movement for people, and a qualified principle of non-discriminatory access to social benefits for those who move?²³ These features of the EU not only raise empirical but also normative questions: no feature of the EU can be postulated as a fixed point, beyond justification. However, for the purpose of this paper I will proceed as if we have such justifications. That is, the argument is premised on the idea that a well-organized single market for goods, services and capital and a well-organized monetary union can create net benefits for each member state *qua* collective entity, which can then be distributed fairly within member states, at least if certain – possibly very demanding – conditions are fulfilled with regard to the organization of welfare state solidarity at the national and the EU level. In this respect, I am on the same page as Van Parijs, Sangiovanni and Viehoff, authors I will discuss in this paper, although the

²² A congenial argument is developed by X. Ragot, *Civiliser le Capitalisme. Crise du libéralisme européen et retour du politique*, Fayard, 2019.

²³ On a more operational level, the latter question implies a sub-question on the technical coordination of social security systems for mobile citizens: should it indeed be the coordination as we have it today? See, for instance, N. Rennuy, The trilemma of EU social benefits law: seeing the wood and the trees, *Common Market Law Review*, vol. 56, pp. 1549-1590, 2019.

opinions on what this implies for the organization of welfare state solidarity diverge. But the reader should be aware of the implicit assumption underlying my (and their) argument.

Freedom of movement raises a more complex problem for the purpose of this paper. A self-standing normative justification for freedom of movement cannot simply be based on the idea that it is beneficial to each member state, taken as a collective entity with a fixed shape, whereby the benefits can be redistributed domestically according to some domestic standard of justice. Mass emigration changes the *shape* of member states – their population size and composition – themselves. Freedom of movement needs justification at the level of individuals, both with respect to mobile individuals and with respect to non-mobile citizens who might be affected by it. I start from the premise that a justification of freedom of movement within the EU is possible, yet it is not a justification *in abstracto*, which would hold as a matter of justice for any set of nation states in any context. The establishment of freedom of movement as a fundamental principle of European integration – the possibility, for instance, for Germans to travel freely to France and French people to travel freely to Germany – cannot be dissociated from the desire to make an end to a history of aggressive nationalism that sparked terrible bloodshed in Europe. The same holds for the freedom of movement that was granted to the citizens of the countries that joined the EU in 2004 and after: freedom of movement for citizens from Central and Eastern member states was an indispensable political component of the new geopolitical settlement, with its promise of peace and openness, which the enlarged EU would embody. Yet, accommodating freedom of movement and well-functioning national welfare state solidarity is not evident (think about the impact of mass emigration of younger people on the age balance, and thus, on pay-as-you-go pension systems, or growing regional divides in countries affected by large-scale emigration). It raises questions that I cannot treat satisfactorily within the confines of this paper.

Starting from these premises, what can we learn from existing philosophical accounts of global social justice with regard to the role the EU should play in insurance and redistribution? In a paper published in 2009, Ronzoni argues that the global order should secure ‘background justice’.²⁴ Applied to the EU, ‘background justice’ means that the EU should allow its member states to ‘take back control’ collectively in domains where they lost control individually, due to processes of internationalization. Arguing about the EU’s social agenda in terms of its capacity to strengthen the ‘real’ social sovereignty of the member states seems politically expedient: it appeals to what seems to exercise a significant segment of the electorate and political actors. In terms of argument, it is also attractive to present an account that promises to build on a relatively

²⁴ M. Ronzoni, The Global Order: A Case of Background Injustice, *Philosophy & Public Affairs*, 37, no. 3, 2009, pp. 229-256.

limited basis: the value of real sovereignty. It is therefore an interesting starting point for this inquiry. *Prima facie*, background justice leads to variants of a *Support* model for the EU; such ‘support’ can include interstate solidarity through mechanisms of insurance, as I explain in the following section. However, contra Viehoff, I will argue that an account of background justice cannot do more work than just that – justifying interstate insurance. It is *a fortiori* unconvincing to argue that background justice among the member states demands that the EU becomes a *Provider* of interpersonal redistribution, via basic income. In fact, background justice cannot explain, let alone, justify, important aspects of what the EU is already doing today.

Background justice means that the EU would be nothing more than an instrument (albeit a very important one) in the hands of the member states. Should we embrace a radically opposite view, which holds that the EU is a laboratory for international distributive justice, whereby national welfare states are demoted from the framework (of our thinking about social justice) to the toolbox of instruments, as Van Parijs argues? At this very point, Van Parijs’s account is ambiguous. Sangiovanni’s work on justice in the EU can be interpreted as searching for a middle ground, whereby neither the existing national welfare states nor the EU are demoted to mere instruments. I believe an account of the EU’s mission statement in the realm of welfare solidarity can only land on that middle ground. However, I entertain some doubts with regard to the way in which Sangiovanni approaches this middle ground. In the next two sections, I will first explore the potential and limitations of ‘background justice’; in Section 6, I will then comment upon Sangiovanni’s work. In Section 7, I will briefly revisit Van Parijs’s understanding of EU justice, and wrap up the argument. Section 8 concludes.

4. Background justice and income insurance

According to Ronzoni, background justice in the global order should allow states to “(1) exercise sovereignty over their territory, (2) regulate justice-relevant socio-economic dynamics, and (3) interact as free and equals with each other.”²⁵ With regard to social justice, she adds that “states need to have enough power to be able to secure internal socioeconomic justice. That is, they need to have both effective control over internal socioeconomic dynamics and reasonable freedom from external interference.”²⁶

Ronzoni explicitly claims that “in the global case, we are not interested in *outcomes*: we do not require states to be equally affluent, possibly not even that they each implement the same conception of domestic social justice.”²⁷ Global background justice requires the support of supranational regulatory institutions: institutions that can tackle tax competition with binding regulatory measures are a prime example.

²⁵ Ibidem, p. 247

²⁶ Ibidem, p. 248.

²⁷ Ibidem, p. 248.

Reiterating the terminology used in the introduction, considerations of background justice thus lead to a model of *regulatory support* by the EU for its member states. Would it stop there? Next to a framework to pre-empt tax competition, setting up a Eurozone re-insurance scheme to buttress national unemployment benefit systems might be an example of what background justice demands. The EU's role would then be to organize *material support*. I will rehearse three types of arguments that can be deployed to that effect: (i) arguments about the fragility of an incomplete EMU and the related need for fiscal stabilizers; (ii) arguments about positive externalities and a prisoners' dilemma associated with unemployment insurance, which may be particularly salient in a monetary union; (iii) arguments explicitly coined in the language of 'background justice'. The first and the second type of argument are both 'functional': a Eurozone unemployment re-insurance scheme is presented as a requirement for the monetary union to *function well*. Justice is the upshot, rather than the starting point. Implementing that functional requirement not only serves stability but implies the organization of solidarity and enhances justice; it improves our capacity to compensate individuals for bad social circumstances for which we do not hold them responsible, which is a matter of justice. The third argument does not start from a functionalist observation: it directly advances arguments of justice.

The first argument basically postulates that for a monetary union to function well, it should be a true 'insurance union'. It should not only benefit from integrated financial markets (which create a kind of 'private insurance' against asymmetric output shocks), it should also centralize risk management with regard to banks, and it needs fiscal stabilizers. Typically, monetary unions indeed pool risks related to unemployment, notably by the complete or partial centralization of unemployment insurance; this adds to fiscal stabilization. In all these respects, the European Monetary Union is incomplete and thus fragile. For a textbook exposition of the fragility problem, I can refer to De Grauwe: Eurozone business cycles display very different amplitudes in the different member countries; in the absence of a budgetary union, large differences in the amplitude of cycles may lead to 'sudden stops', i.e. large liquidity outflows hitting the countries experiencing the most severe recession, destabilizing the whole system.²⁸ For De Grauwe, the ideal solution is a true budgetary union; but given the political obstacles, Eurozone unemployment insurance would be an important first step to remedy the monetary union's fragility. Thus, the argument is based on a contingent, empirical observation. But De Grauwe adds a normative consideration: both integrated financial markets and unemployment insurance can act as stabilizers for the monetary union, but unemployment insurance would protect the majority of citizens (and a

²⁸ For a summary of the argument, see P. De Grauwe, *The Economics of Monetary Integration*, 12th edition, Cambridge: Cambridge University Press, 2018, pp. 140-141.

fortiori the position of the most vulnerable people) better than financial markets, which cater mainly for the well-to-do.²⁹

Whilst the latter observation is certainly true, it adds a normative twist to the functional ‘fragility’ argument. A merely functional argument about the need for Eurozone fiscal stabilizers does not necessarily take us that far down the road. In principle it is conceivable to design an interstate insurance against severe employment shocks without any link to the cashing out of unemployment benefits. For instance, Carnot et al. present a model of interstate insurance, triggered by unemployment shocks, which would act as an effective fiscal stabilizer: it would *not* be conditional on any requirement, neither with regard to the way in which member states use the budgetary support granted by the insurance, nor with regard to the shape of existing policies in the participating member states or the quality of their unemployment benefits.³⁰ Such a non-intrusive scheme must have the features of a (quasi-)pure insurance; the diversity of member states’ unemployment experience is converted into a risk profile that becomes quasi-homogenous across the member states. It would keep the solution safely within the confines of a mere *Support* model, as the interference with member states’ domestic policies would be minimal.

Do we have other ‘functional’ arguments in support of Eurozone unemployment insurance? The answer is a tentative ‘yes’. In principle, common minimum standards for the member states’ unemployment benefit systems and mutual assistance at the Eurozone level to support such standards can be justified on the basis of externalities and a prisoners’ dilemma. Let me explain how such an argument works. First, national insurance systems create a positive externality: the stabilisation of effective economic demand in one country contributes to the stabilisation of demand (via trade links) in other countries. Because of that positive externality, it is a matter of common concern that all members of the monetary union dispose of an effective stabilization capacity. As with any good with a positive externality, there is a risk of insufficient, sub-optimal provision of that good, if it is not promoted or supported in one or other way. Second, the risk of under-provision may be more important in a monetary union than in an integrated market with adaptable exchange rates: unemployment insurance has a direct impact on wage costs, and in a monetary union deviations in wage cost competitiveness cannot be remedied by changes in the exchange rate. In other words, the member states of a monetary union may be caught in a prisoners’ dilemma when it comes to the development of unemployment insurance: without coordination, they may not provide it, although they would all benefit from it. Historically, the efforts by the US federal administration in the 1930s to create a federal framework in support of state-based

²⁹ P. De Grauwe, *op. cit.*, 2018, p. 19.

³⁰ N. Carnot, M. Kizior, M. and G. Mourre, *Fiscal stabilization in the Euro-Area: a simulation exercise*, CEB Working Paper N° 17/025, October 2017. For a short summary of this approach, see F. Vandenbroucke, et al., *Risk Sharing When Unemployment Hits*, *op. cit.*, 2018.

unemployment insurance systems, in exchange for specific minimum requirements that state systems had to comply with, can be interpreted as an answer to a classic prisoners' dilemma.³¹

To see the full chain of arguments, think about vaccination, which is the archetypal example of a good with a positive externality. As with any good with a positive externality, vaccination is subsidized by public authorities and/or made compulsory to prevent under-consumption. Applying it to our case, a monetary union, 'compulsory vaccination' would mean that the members of the monetary union agree on a set of common principles that secure an effective domestic stabilisation capacity and mandate all member states to implement those principles (a 'vaccination programme'). The stabilisation capacity of a social system indeed depends on a whole cluster of policy principles: sufficiently generous unemployment benefits; sufficient coverage rates of unemployment benefit schemes; no labour market segmentation that leaves part of the labour force poorly insured against unemployment; no proliferation of employment relations that are not integrated into systems of social insurance; effective activation of unemployed individuals; and the constitution of budgetary buffers in good times, so that the automatic stabilisers can do their work in bad times. The implementation of such a cluster of principles in *each* member state of the monetary union – their vaccination against socio-economic instability – would then be seen as a matter of common concern: this common concern logically leads to the policy *Guide* model (imagine some soft coordination process of domestic policies on the basis of this cluster of principles). If the policy guidelines are translated into individual rights for citizens, we shift from the *Guide* model to the *Guarantor* model: this might be a natural move, although guidance of domestic policies, if effective, would be sufficient from a merely functionalist perspective.

Vaccination is not only compulsory in most countries; it is also subsidized. An interstate insurance mechanism that supports the member states' unemployment insurance, either permanently or only when they are hit by a severe economic shock, would instantiate the idea of subsidisation. If an interstate insurance is associated with minimum requirements with regard to the quality of the unemployment benefit systems that are supported, the *Support* model and the *Guide* model (or even the *Guarantor* model) are combined.

Admittedly, the prisoners' dilemma part of this argument is more relevant to understand the history of the US than it is, today, relevant as a policy argument in Europe. Unemployment insurance was barely developed in the US, when the US was already a monetary union, and without federal policies it would probably not have taken off; the prisoners' dilemma was very real. In contrast, in Europe, national

³¹ See S. Simonetta, What the EU can learn from American experience with unemployment insurance, *Intereconomics. Review of European Economic Policy*, 52(3), 2017, pp. 142-148.

unemployment benefit schemes were established long before the emergence of the monetary union. The externalities part of the argument is theoretically sound.³² But its actual empirical importance may be doubted: is the leakage of domestic effective demand to trade partners important enough to generate the ‘positive external effect’ that would then *diminish* a national governments inclination to set up unemployment insurance? De Grauwe’s functional argument in support of European unemployment insurance is not premised on externalities of *this* kind.

While De Grauwe’s argument is based on contingent empirical observations about the fragility of EMU, the vaccination argument is more general (it also applies when economic shocks are mostly symmetric and similar in amplitude). Also, the vaccination argument straightforwardly justifies Eurozone support for national unemployment insurance systems on a functional basis, which the ‘fragility’ argument does not, at least not without some additional normative considerations. Empirically, however, the vaccination argument may be less compelling.³³ There is a more general lesson here about the limits of such functionalist arguments. What the Eurozone ‘needs’ to cure its fragility entails complex empirical discussions. There is scope for reasonable disagreement, and there will probably never be black-or-white judgments in this matter: we should not think there is only “a small finite number of consistent policy choices”, as Schelkle puts it;³⁴ Heidenreich rightly warns against “functionalist fallacies” in this debate.³⁵ As I will argue below, our thinking about what the EU ‘needs’ to ‘function well’ is always somewhere on a bridge between functionalist arguments and what we believe to be shared aspirations.

Viehoff links the case for cross-country insurance mechanisms in the Eurozone *directly* to the need to maintain adequate domestic social protection systems, *for the sake of ‘Eurozone justice’*. Viehoff argues that a monetary union should respect two principles of justice: a principle of robust non-exploitability and a principle of equitable risk sharing. Robust non-exploitability means that the monetary union’s arrangements must not foreseeably create conditions of vulnerability in some member states that are likely to engender exploitation in core domains of their effective economic sovereignty, by other states, by creditors, by banks, and so on. Such a demand of justice does not preclude conditions that impose certain domestic policies on debtors, if their foreseeable consequences do not threaten the satisfaction of minimum welfare provisions. However,

³² Cf. Chetty and Finkelstein, *op. cit.*, who include externalities in the additional motivations for government intervention in insurance markets.

³³ The vaccination argument is an interesting pedagogical device, as it underscores the shared benefits of collective action. Empirically, the vaccination argument is probably more compelling to make the case for a banking union than for European unemployment insurance.

³⁴ W. Schelkle, *The political economy of monetary solidarity: understanding the euro experiment*, Oxford: Oxford University Press, 2017, final chapter

³⁵ M. Heidenreich, Towards a European Social Union? A Rokkianian–Mephistophelian remark, in: M. Ferrera (ed.), *op. cit.*, p. 87.

it “necessitates that each state’s social protection regime meets minimal conditions of adequacy”. And, “[w]here the latter cannot be guaranteed by the state alone, cross-country insurance mechanisms and redistribution becomes mandatory.”³⁶ Viehoff describes his argument as about “background justice”.³⁷ The principles sketched govern relations between member states, not between individuals. However, this account of background justice requires the EU to move beyond the *Support* model and to become a true *Guarantor* of individual social rights, at least in the realm of minimum income protection.

For all practical purposes, I have a lot of sympathy for Viehoff’s conclusion: it would be good to organize mutual assistance in support of commonly agreed minimum welfare provisions in the Monetary Union. If such welfare provision is about unemployment insurance, Viehoff and I are exactly on the same page, as will become clear throughout this paper. However, people who think differently (differently than Viehoff and me) about the intrinsic value and importance of social protection, may be less convinced by the chain of arguments leading from ‘effective economic sovereignty’ to ‘the satisfaction of minimum welfare provisions’. Recall Ronzoni’s definition of background justice: background justice should allow states to exercise sovereignty over their territory, regulate justice-relevant socio-economic dynamics, and interact as free and equals with each other. Without a shared agreement that ‘minimum welfare provisions’ are part and parcel of what sovereignty should secure, it is unclear why sovereign nation states that enter a monetary union would agree on the mutual support of such minimum welfare provisions. For sure, if a *premise* of the argument is that the monetary union is a union of welfare states and that the member states *agree* on the intrinsic value of specific minimum rights in a welfare state, Viehoff’s argument becomes entirely convincing. But then, the work is done by the fact that the union is postulated to be a union of welfare states that share an aspiration: they all want to maintain their welfare states.

The weakness of a normative account based on ‘member state sovereignty’ becomes even more visible when one asks which indication it yields with regard to the *level* of minimum welfare provision that is deemed necessary. This account suggests a justification as to *why* the monetary union should organize mutual support for minimum welfare provision, but it does not create a framework allowing to discuss what ‘minimum welfare provision’ substantively implies. Without some consensus across the ‘sovereign member states’ on at least some criteria to define the minimum that is deemed necessary, the sovereignty-based account lacks content.

In short, however we frame the case for Eurozone unemployment re-insurance (or, more generally, the case for Eurozone support for ‘minimum welfare provisions’), we always need the premise of shared aspirations, that is, we need a consensus among

³⁶ J. Viehoff, Eurozone Justice, in *The Journal of Political Philosophy*, Vol. 26, Number 3, 2018, p. 403.

³⁷ J. Viehoff, Eurozone Justice, *op. cit.*, p. 395, note 28.

member states that adequate unemployment benefits (or, more generally, ‘minimum welfare provisions’) are a valuable objective. Moreover, to make the normative account operational, we need a basic consensus on at least some criteria for the adequacy of minimum benefits. This goes against the grain of ‘background justice’, as defined by Ronzoni. As mentioned in section 1, the archetypal model of pure insurance is motivated, first and foremost, by self-interest: since an account of background justice builds on the self-interest of member states, it is not happenstance that it can justify interstate insurance; but in order to go beyond *interstate* insurance and to indicate which *domestic* objectives it should serve, one needs more than an account of background justice among nation states.

As I indicated above, it is theoretically possible to set up an interstate insurance scheme against severe unemployment shocks, that does not interfere with any domestic policy choices. The ‘vaccination argument’ leads to a different scheme: the vaccination argument implies that European re-insurance should not only contribute to domestic policy principles that secure effective stabilisation but also be conditioned by such principles (i.e. minimum standards with regard to the quality of national unemployment insurance and the training and activation services provided to the unemployed). That is, the organization of solidarity would imply a degree of convergence across member states in the realm of unemployment insurance and activation, *pace* Schelkle’s argument about diversity and solidarity. A pragmatic political argument supports such an approach: attitude research shows that a ‘reciprocal’ combination of policy conditions with which governments and individuals have to comply on one hand, and sufficiently generous support for a minimum level of unemployment benefits on the other hand can gather significant public support in many EU countries.³⁸ For sure, this is a pragmatic, empirical argument about actual public attitudes and a broadly shared sense of reciprocity, rather than a foundational, normative argument about justice.³⁹ A normative account that aims to go beyond a pure interstate insurance model, needs some presumption about the intrinsic value of common pan-European minimum standards.

³⁸ See note 22.

³⁹ I concur with Swift that public opinion research informs us, *inter alia*, about the political feasibility of conceptions of justice but cannot tell us which conception of justice *we* should endorse in a normative debate; see A. Swift, Social justice: why does it matter what the people think? In: D. Bell and A. de-Shalit (eds.) *Forms of Justice: Critical Perspectives on David Miller’s Political Philosophy*. Lanham: Rowman Littlefield. On the relation between opinion research and normative theorizing, see also A. Baderin, A. Busen, T. Schramme, U. Luke, and D Miller, D., Who cares what the people think? Revisiting David Miller’s approach to theorizing about justice, *Contemporary Political Theory*, Vol. 17, Issue 1, 2018.

5. Background justice and income redistribution

Would considerations of background justice among EU member states support the case for interpersonal transnational redistribution, whereby the EU becomes a direct *Provider* of redistributive solidarity? According to Viehoff (in a different paper than the one just referred to) the answer is positive, and it is even quite specific about the way in which redistributive solidarity should be organized: “versions of liberal or republican intergovernmentalism according to which justice obtains whenever states realise an ideal of non-domination or background justice amongst themselves” can serve as a justificatory basis for introducing a European basic income (next to other philosophical accounts of justice).⁴⁰ Viehoff emphasizes that for these intergovernmentalists an important feature of unconditional and universal basic income is that it is “relatively non-intrusive as far as the structure of existing European welfare policies is concerned”.⁴¹ It creates a support scheme that underpins the existing welfare regime without pre-empting national debates, for instance on the conditionality of benefits, and is therefore both more realistic and respectful of national autonomy than a more comprehensive EU scheme that seeks to solve these disagreements.⁴²

A similar argument permeates the work of Van Parijs on basic income: according to Van Parijs, a pan-European basic income would be the best solution to solve a range of problems of European integration, which all threaten national welfare states: a pan-European basic income would contribute to “saving from extinction the so-called European social model”.⁴³ Whilst basic income is clearly his preferred option, in his most recent publication on the EU, Van Parijs formulates the case in a more generic way: a scheme of transnational interpersonal redistribution that creates “a sturdy EU-wide common floor” would “buffer national-level redistribution against social and tax competition and thus would make the diversity of the existing models sustainable”.⁴⁴ This quote and the preceding quotes illustrate that the arguments tabled by Viehoff, Van Parijs and Vanderborght are about background justice among political entities that share the aspiration to be welfare states; we are considering a kind of ‘augmented’ background justice, so to speak. Whilst background justice among states that aspire to be welfare states can justify the organization of pan-European solidarity via re-insurance of national welfare functions (see Section 4), it cannot justify a pan-European basic income, so I argue.

The arguments developed by Van Parijs, Vanderborght and Viehoff relate to various specific challenges to the European project, such as: the stabilization of the monetary union, the maintenance of decent minimum wages, and the threat of selective

⁴⁰ J. Viehoff, *Maximum convergence*, *op. cit.*, 2017, p.166.

⁴¹ *Ibidem*, p. 183.

⁴² *Ibidem*, p. 168..

⁴³ P. Van Parijs and Y. Vanderborght, Y., *op. cit.*, p. 231.

⁴⁴ P. Van Parijs, *Just Europe*, *Philosophy & Public Affairs*, Vol. 47(1), January 2019, p. 31.

migration. I have discussed these arguments elsewhere extensively.⁴⁵ In a nutshell, they suffer from the following flaw: if it is true that the EU's principal justice-related problem is that European integration has diminished core capabilities of national welfare states, such as national redistribution and national stabilization, without adequately ensuring their functioning at a higher level, efficient remedies need features which make them depart from the defining features of a pan-European basic income. Let me rehearse briefly the arguments pertaining to stabilization and minimum wages.

Van Parijs, Vanderborght and Viehoff argue that a pan-European basic income would provide a solution to the Eurozone's stabilization problem. They admit that, with a view to stabilization, basic income is less efficient than unemployment insurance; nevertheless, they maintain that basic income is an interesting solution. Why is basic income comparatively inefficient? First, unemployment benefits are an important stabilizer because they constitute a replacement income that kicks in when people lose their job. In contrast, a transfer that always supports household incomes, whether or not people are hit by unemployment, has much less power in terms of stabilization: the benefit provides a steady stream of income, but the income loss, created by the loss of one's job, is not compensated for.⁴⁶ Therefore, compared to unemployment insurance, a universal and unconditional benefit is a sub-optimal solution, if stabilization is the main purpose, precisely *because* it is universal and unconditional.

For a benefit system to be an effective macro-economic stabilizer it needs yet another feature, which the advocacy for pan-European basic income seems to overlook: its level should stand in a certain relation to the level of average wages in the country where it is to operate. In other words, the defining features of an instrument which purpose is to stabilize a set of heterogeneous welfare states with very diverse levels of wages, are exactly opposite to the defining features of a pan-European basic income.⁴⁷

With regard to minimum wages, Viehoff contends that pan-European basic income “does present a relatively simple way of indirectly introducing minimum wage regimes: after all, what it does is to increase the reserve price of cheap labour”.⁴⁸ Apart from the fact that the level of basic income envisaged by Van Parijs, Vanderborght and Viehoff is low, even compared to minimum wages in less developed countries of the EU, the way in which this argument is formulated is disputable: it suggests a direct and simple

⁴⁵ F. Vandenbroucke, *Basic income in the European Union: a conundrum rather than a solution*, ACCESS EUROPE Research Paper 2017/02, 2017.

⁴⁶ The same point is made by the OECD from a broader economic –policy perspective, in its report on *The Future of Work* (OECD, 2019), on p. 314: basic income “does not act as an automatic stabilizer” because “spending levels do not go up during a downturn and they do not fall during an upswing”.

⁴⁷ An additional remark concerns the funding proposed by Van Parijs and Vanderborght: they opt for an increase of VAT at a European-wide scale. With a view to stabilization, VAT is less adequate than funding systems based on personal income taxation or social security contributions. See for some elaboration on this, F. Vandenbroucke, *Basic Income*, *op. cit.*, 2017, p. 21-22.

⁴⁸ Viehoff, J. Maximum convergence, *op. cit.*, 2017, p. 182.

relationship between the level of an unconditional basic income and the ‘reservation wage’, whilst that relationship is more complicated. In standard economic analysis, the reservation wage is the lowest wage rate at which a worker would be willing to accept a particular type of job. For a worker entitled to unemployment insurance, the unemployment benefit level is a crucial determinant of his reservation wage, since it cannot be combined with earning a wage income, for which it is an alternative. In a highly simplified representation, discarding all other variables influencing search behavior on the labour market, the worker will not accept a job which weekly wage is below the weekly unemployment benefit he is entitled to, because that decision would lead to a reduction in his income. The relationship between an unconditional basic income and the reservation wage is less clear-cut, even in the most simple presentation of job search behavior. For sure, the unconditional basic income creates what is called an ‘income effect’ on the labour supply function of the worker: this income effect normally implies that, for any given wage rate, the worker’s labour supply will be less than in a counterfactual without basic income. This change in the supply function in turn puts upward pressure on the wages that will obtain in the market as a result of the forces of supply and demand. However, the unconditional basic income does not create a wage ‘floor’ below which the worker will not want to work. With a universally accessible unemployment insurance benefit of X euro per month, unemployed individuals will not accept a job paying less than X euro per month (sticking to the most simple presentation of the problem); with an unconditional basic income of X euro per month, people will normally ask more pay for any given job, but there is no reason why they should not accept a job paying less than X euro per month, and the extra pay which they will want to obtain (for any job offer) may be only a fraction of X.

For sure, if ‘no work’ means ‘no income’, the ‘income effect’ of an unconditional basic income is very important at the bottom end of the wage scale. ‘No work’ might mean ‘no income’, either because there is no unemployment insurance in the society under review, or because the individual refuses the conditions attached to unemployment insurance (such as the acceptance of jobs he/she does not like) and thus forfeits the unemployment benefits. In these conditions are very tough – if the unemployed have to accept any job without further ado – the actual level of the wage floor will depend on the level and universality of the minimum wage, if there is one. In the actual practice of welfare states, the combination of minimum wages and unemployment insurance creates a set of differential wage floors (a range of reservation wages) depending on the salary earned by individuals before they lost their job and on conditions with regard to job search effort attached to unemployment benefits.⁴⁹ If one believes that the readiness of workers in less-developed welfare states to accept badly paid jobs is the source of social dumping,⁵⁰ an unconditional basic income set at a uniform European level is a

⁴⁹ For a more detailed exposition, see F. Vandenbroucke, *Basic Income*, *op. cit.*, 2017, pp. 23-25.

⁵⁰ Viehoff, *Maximum convergence*, *op. cit.*, 2017, p. 175 and p. 182.

poor instrument to prevent this from happening. The instrument needed is a combination of adequate unemployment insurance and policies with regard to the quality of jobs in each member state. Hence, the quality of jobs should be considered a matter of common concern in the European single market. Job quality is supported by the combination of minimum wages and a nuanced and fair notion of work-conditional in the context of unemployment insurance – i.e. a conditionality that does not force unemployed people to accept any job, however lousy it may be.

Decent unemployment insurance and minimum wages are country-specific: their level must depend on the average level of productivity in each individual welfare state. One should note that my foregoing argument is based on the nature of basic income, but it holds *a fortiori* for a pan-European basic income, which level would be independent of the national productivity level and less than the existing minimum wage in all member states. Given the existing systems of unemployment insurance and minimum wages, its impact would, in all probability, only be marginal.⁵¹ If social dumping is a concern, the relevant actions are: improve unemployment insurance, generalize universal systems of minimum wages.⁵²

Admittedly, defenders of basic income entertain a broader claim: on the one hand, basic income fundamentally strengthens the bargaining position of individuals by creating an exit option from employment; on the other hand, basic income improves work incentives, when compared to unemployment insurance or means-tested benefits. The latter claim presupposes that basic income is set at a sufficiently high level: if it is significantly lower than current social benefits, the incentive effect will be very small. Martinelli applies micro-simulation to UK data to show that it is impossible to pursue three objectives with basic income simultaneously: first, a radical simplification of existing welfare policy, so that employment incentives significantly increase; second, adequacy, that is, an impact on poverty that is at least as good as the impact of current welfare states; third, budgetary affordability, i.e. no significant increase in taxation levels.⁵³ In short, basic income is confronted with a trilemma of incentives (through simplification), poverty and affordability. For sure, the trade-offs are different between countries, depending on the quality of their welfare states, as a set of micro-simulations applied to all EU countries by Martinelli illustrates: if welfare provision is generally comprehensive in coverage of the (poor) population, and payments are efficiently targeted towards the poor, then the affordability/adequacy trade-off is salient. On the other hand, if there are large gaps in its coverage and/or payments are relatively

⁵¹ Worse, if someone would propose to substitute pan-European basic income for existing regimes of unemployment insurance and minimum wages (which is not proposed by Van Parijs, Vanderborght or Viehoff), the result would be more social dumping, rather than less.

⁵² In addition, an adequate regulation of posting of workers is necessary, an issue to which Viehoff (Maximum Convergence, p. 182) also refers.

⁵³ L. Martinelli, A Basic Income Trilemma: Affordability, Adequacy, and the Advantages of Radically Simplified Welfare, *Journal of Social Policy*, 2019.

generous for the non-poor (i.e. they are inefficiently targeted), the affordability/adequacy trade-off may break down.⁵⁴ Space forbids to elaborate on this argument here, but the empirical observation of this trilemma is important as a backdrop to the argument that follows.

Let us suppose, for the sake of the argument, that Van Parijs, Vanderborght and Viehoff concede that a pan-European basic income is comparatively inefficient if instability and social dumping are our concern; could they argue that the comparable advantage of pan-European basic income, viz-à-viz other solutions, is that basic income is ‘not intrusive’, i.e. that it respects the diversity of existing social models?⁵⁵ Take a modest basic income, say of 200 euro per month, i.e. ca. 8% of the EU’s average GDP per capita.⁵⁶ Let us suppose that the amount is adjusted on the basis of purchasing power parities, to take into account differences in price levels. In Belgium this scheme would amount to a basic income of, roughly, 7% of GDP per capita; in Bulgaria this amounts to a basic income of ca. 16% of GDP per capita. If such scheme is implemented, Belgians have to send a transfer of 1% of their GDP per capita abroad, and have to install a basic income of 7% of GDP per capita; Bulgarians receive 8% of GDP per capita from abroad, and have to install a basic income of 16% of GDP per capita. Belgium might integrate a considerable part of this basic income into its social benefit system (which weighs 29% of Belgian GDP) and it might raise taxes, on balance, with a figure in between 1% and 7% of GDP. In the latter hypothesis – a maximal integration of basic income in existing benefits – the scheme can be considered as ‘not very intrusive’ in the Belgian social system, but its impact qua simplification and incentives is also very limited, and the impact on poverty may be negative. In fact, Martinelli’s trilemma between incentives, adequacy and affordability becomes even more acute for a rich EU country if a pan-European basic income is introduced for which the richer countries have to do an *extra* effort that does not benefit their own population.

For Bulgaria, in contrast, 16% of GDP per capita is more or less equivalent to its existing social benefit system (total social spending is currently 17% of Bulgaria’s GDP), which means that it can either create a new social system that is, in the aggregate, twice as generous as its current system, or abolish its current system, replace it by basic income

⁵⁴ L. Martinelli, L. and K. O’Neill, *A comparison of the fiscal and distributional effects of alternative basic income implementation modes across the EU28*, Euromod Working Paper Series 14/19, July 2019, p. 47.

⁵⁵ Denuit has developed an argument with regard to European basic income that is congenial to Van Parijs, Vanderborght and Viehoff, yet more nuanced in a number of respects. He stresses the intrinsic merit of basic income as a vehicle to redistribute incomes in Europe and, by giving more substance to European citizenship, a source of legitimacy for the EU. He strongly emphasizes the non-intrusive character of a pan-European basic income. For a synthesis of his research, see F. Denuit, *Le Revenu Universel européen: une nouvelle voie pour l’Europe sociale*, in: R. Coman, L. Fromont, A. Weyembergh (dir.), *Les solidarités européennes, Entre enjeux, tensions et reconfiguration*. Bruylant, 2019, pp. 227-258.

⁵⁶ In developing this argument, I am much indebted to the Sangiovanni’s discussion of this proposal at the EUI Conference ‘Is Europe Unjust?’

and drastically reduce the taxes its levies on its citizens; or it can choose an intermediate strategy in between these two extremes. Thus, for Bulgaria, one can safely assume that Martinelli's trilemma does not apply, as long as it is subsidized by other EU countries: a subsidized scheme can obviously reduce poverty in Bulgaria. Bulgaria may also be considered a poorly developed welfare state. Simultaneously, given the already existing level of minimum wages and unemployment insurance in Bulgaria, the impact on low-wage competition from Bulgaria remains limited. Nevertheless, the idea that this scheme is 'not intrusive' viz-à-viz Bulgaria's social fabric strikes me as implausible. By introducing a uniform, unconditional cash benefit which budgetary impact is as large as Bulgarian total social spending today, it represents a fundamental departure from that country's current social policy trajectory. If one is not fundamentally convinced that basic income is a superior answer to the challenges besetting contemporary welfare states (superior as compared to the traditional arsenal of welfare state policies), one would not propose it. Empirical research does not support that belief: compared to a well-organized and efficient 'traditional' welfare edifice, without such a subsidy from abroad, basic income is an inferior solution with regard to adequacy, affordability and incentives.

6. Fairness in distributing the risks of cooperation

The upshot of the preceding arguments is that considerations of 'background justice', without shared welfare state aspirations and a degree of consensus on what domestic social justice implies, have limited purchase in a debate on the EU's role in welfare state solidarity. In fact, in many respects, the EU already trespasses the boundaries of background justice as Ronzoni defined it in 2009. First, while 'background justice' would "not be interested in outcomes" and "not require states to be equally affluent", upward convergence in prosperity is a stated aim of the EU. Second, the EU has developed common objectives with regard to (domestic) social inclusion in the member states. Admittedly, the OMC around those common objectives was a very soft process, but one cannot say that the EU was uninterested in outcomes of domestic policies or driven by the minimization of interference in this domain. Third, free movement, which is a key dimension of the EU, does not follow from an account of background justice as proposed by Ronzoni. One might even think that her account *prima facie* militates against free movement, as this interferes with the exercising of 'sovereignty over their own territory'. In this sense, Ronzoni's 'background justice' is at odds with the EU as it already functions today. Obviously, this observation is not a decisive argument against 'background justice': an advocate of (true) 'background justice' might argue that the EU has already gone much too far in its interference with national welfare states.

For sure, Ronzoni is aware of the fact that most accounts of justice for the EU are not limited to 'background justice' as she defined it in 2009. In her more recent discussion of 'demoicracy', she writes: "[...] normative political theorists working on the EU usually

refrain from developing normative standards that are parachuted on the EU from a Platonic realm of ideas. On the contrary, they are almost always motivated by the idea that one should critically assess the EU by employing, as much as possible, the standards that the EU has *set for itself*.” Her discussion of democracy “works within this paradigm”.⁵⁷ It is indeed difficult to define relevant normative standards for the EU without any reference to the aspiration of its founding fathers to put an end to a history of political instability and war, by means of trade integration and cross-border mobility of people.

In contrast to accounts based on ‘background justice’, Sangiovanni argues that the EU *cannot* be conceived as merely an instrument that contributes to the problem-solving capacities of member states, one-by-one. Transnational forms of cooperation (including cross-national transfers, such as via the structural funds, and free movement) need independent justification, that is, independent from the self-interest of member states one-by-one.⁵⁸ At the centre of any account of justice for the EU there must be “a *fair* distribution of the costs and consequences of integration”.⁵⁹ Sangiovanni frames the costs and consequences of integration in terms of risks, and applies a Dworkinian insurance thought experiment to it. We have to ask “what insurance member states would purchase behind a (thin) ‘veil of ignorance’ rather than what principles they would choose in that position”.⁶⁰ I find this conceptual construction not satisfactory as an account for characterizing the challenge of justice in the EU; I will explain my objections first with regard to the notion of risk.

Sangiovanni includes in the risks of belonging to the EU: the impact of free movement and the jurisprudence of the European Court of Justice (ECJ) with regard to free movement on (i) the structure and sustainability of social services and on (ii) collective bargaining relations in member states; he also includes the impact of internal market and competition law and the ECJ’s jurisprudence⁶¹ on ‘services of general interest’. These impacts vary between member states, as they depend on the type of welfare state. For instance, as Sangiovanni mentions, the impact of internal market and competition law depends on whether social services make extensive use of public-private partnerships. One could add, as another example of context-dependence, that the

⁵⁷ M. Ronzoni, The European Union as a democracy: Really a third way?”, *European Journal of Political Theory*, 2017, Vol. 16(2), 210-234; quotes from p. 215 and p. 216.

⁵⁸ A. Sangiovanni, *Principles of Justice for the European Union: A Sketch*, Paper presented at a Workshop in Cambridge, April 27, 2018. The wording is based on A. Sangiovanni, Debating the EU’s Raison d’Être: On the Relation between Legitimacy and Justice, *Journal of Common Market Studies*, January 2019, Vol. 57(1), pp. 13-27; see in particular his description of the difference between ‘model 3’ and ‘model 4’ which he sets out on pp. 22-23. I infer from Sangiovanni’s 2018 Cambridge paper that he indeed rejects ‘model 3’, in favour of ‘model 4’.

⁵⁹ A. Sangiovanni, Debating the EU’s Raison d’Être, *op. cit.*, p. 24.

⁶⁰ A. Sangiovanni, Solidarity in the European Union, *Oxford Journal of Legal Studies*, Vol. 33, No. 2, 2013, p. 230.

⁶¹ A. Sangiovanni, Solidarity, *op. cit.*, 2013, pp. 226-227.

impact of the CJEU *Laval* judgment crucially depends on whether minimum wages are set by national public authorities or solely by collective bargaining, and whether collective bargaining is organized at the national level and sets national standards, or at the local level.⁶² Sangiovanni considers such impacts as ‘risks’, for two reasons. First, they depend on the ECJ’s case law, which development is “neither reasonably avoidable nor foreseeable”.⁶³ Second, the welfare state regime type of a member state is ‘in most cases’, the product of ‘mere historical luck’. Hence, the member states have to cope with unforeseeable exogenous events, which impact is different across member states for reasons largely beyond their control.

There are two independent problems with this account. First, it leans heavily on a determinist understanding of the role of the ECJ, as if the Court is one-dimensional in its promotion of individual mobility and liberalization, but, more importantly, as if its judgments leave very little leeway to the policies of individual member states whilst, moreover, member states are, collectively, unable to change the political framework that informs the judgments. This influential account, developed and defended brilliantly by Fritz Scharpf, which presents the Court as overwhelming individual member states and *de facto* uncontrollable by their collective political deliberation, cannot be taken for granted. The evidence is more nuanced both with regard to the leeway of member states and with regard to the possibility of collective political action that reverses the Court’s case law. Recent empirical research confirms that politics, both at the joint EU level and at member state level, is more important than Scharpf’s account makes us believe.⁶⁴ In other words, the parties to the cooperative scheme that is the EU, do not have to set up an ‘insurance’ against an exogenously operating and unpredictable Court; they have to set up a democratic polity that is not dominated by such a Court, i.e. a polity in which continuous *political* deliberation on the ways and means to make free movement compatible with domestic social cohesion is possible. My point is not only that the deliberation among the parties behind the ‘veil of ignorance’ would take another route

⁶² In *Laval*, the Court argues that only *predictable* systems of minimum wage protection can be imposed on foreign companies that post workers: Member States must create a legal context in which only generally applicable minimum wage protection has to be respected by foreign service providers. This means that social partners should reconsider traditional positions on subsidiarity within welfare states: they should reconsider the respective roles of social partners and public authorities, or, reconsider the relation between nationwide collective bargaining and local bargaining. The actual responses in Sweden and Denmark to the *Laval* case reaffirm the autonomy of collective bargaining, but introduce conditions for the exercise of collective action: collective agreements can be enforced only through collective action against foreign service providers if they correspond to existing nationwide collective agreements and do not define conditions beyond the hard core of the Posting of Workers Directive. Hence, the Swedish and Danish domestic responses also change the rules of the game in terms of the subsidiarity of the national versus the local level. See M. Blauburger, ‘With Luxembourg in mind ... the remaking of national policies in the face of ECJ jurisprudence’, *Journal of European Public Policy*, 2012.

⁶³ A. Sangiovanni, *Solidarity*, *op. cit.*, 2013, p. 228.

⁶⁴ D. Sindbjerg Martinsen, *An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union*, Oxford: Oxford University Press, 2015.

than Sangiovanni suggests; the point is also that the current situation does not correspond to the Scharpfian analysis that informs Sangiovanni's account.

Even if we grant that the logics of free movement and market integration generate a *degree* of 'unforeseeable risk' for member states that sign up to the initial principle, there is a second problem with this account: the actual impact of the risk (the 'damage' that must be covered by the hypothetical insurance) depends on national policy choices. On a fundamental level, whether or not a member state wants to establish an encompassing and collectively organized social welfare state, is a matter of political choice. On a more practical level, the extent to which social services are organized on the basis of public-private partnerships, and therefore potentially more 'vulnerable' with regard to the liberalizing logic of the internal market and competition law, is also a matter of political choice. Or, whether or not minimum wages are set at the national level, rather than at the local level, is a political choice. Sangiovanni refers to Dworkin. In a Dworkinian understanding of the problem at hand, the national architecture of a welfare state – both its fundamental objectives and the ways and means to deliver on the objectives – would be classified as 'ambition' or 'preference', not as 'circumstance', even if we grant that such architecture is the product of history, highly path-dependent and difficult to change in the short-term. Dworkin deems people responsible for the preferences *with which they identify*.⁶⁵ Dworkin has been adamant on this: "Equality of resources places special emphasis on people's responsibility for the choices they make, not because it supposes, absurdly, that people's choices are causally independent of their culture, history, and circumstance, or that people have chosen the convictions, ambitions, and tastes that influence their choices, but because it aspires to a political morality that makes sense in terms of each citizen's internal practices of moral and ethical criticism, including self-criticism."⁶⁶ Extrapolating this argument to the level of nation states that organize welfare states, I would say: if nation states identify with the choices they have historically made in the architecture of their welfare states, or if they are able to reflect critically on them whilst considering them as the result of 'unfortunate historic choices', the architecture of their welfare state cannot completely be relegated to the realm of *circumstances*: such an approach would pay insufficient respect to the collective agency embodied in democratic nation states. Admittedly, there is nuance: economic conditions influence the potential for welfare state developments; and the path-dependency of past choices means that changing course can be both time-consuming and costly.⁶⁷ In general, we should not be overzealous in assigning

⁶⁵ This explains why preferences that are 'cravings' are not seen as a matter individual responsibility in Dworkin's account.

⁶⁶ R. Dworkin, *Sovereign Virtue Revisited*, *Ethics*, p. 107.

⁶⁷ For this reason, 'solidarity in reform' is a matter of justice. The 'Budgetary Instrument for Convergence and Competitiveness for the euro area', which is proposed by the European Commission, can be interpreted as an instrument for 'solidarity in reform': it allows to develop true solidarity with member states that are confronted with budgetary difficulties in the pursuit of reforms.

responsibility to either individuals or collective entities such as EU member states for their past decisions: an obsession with ‘moral responsibility’ may make it impossible to agree on any risk-sharing scheme; insurance *always* entails a degree of moral hazard: one can try to minimize it, but it cannot be eliminated.

However, the architecture of welfare states is more a matter of Dworkinian ‘ambition’ than a matter of ‘circumstance’. Whether or not behind a ‘veil of ignorance’, nation states that decide to create a single market based on the free movement of goods, services, capital and people, would define common principles which would allow to accommodate a diverse set of ambitions with regard to the level of development, objectives and architecture of welfare states. The ‘ambitions’ need not be the shared ambitions of all the parties to the agreement, but they would all accept the need to accommodate those ambitions. The hypothetical insurance paradigm fits uneasily into this context: in so far as the expression ‘insurance’ would apply, the ‘insurance’ is a 100% guarantee that certain ambitions with regard to welfare state development will be accommodated adequately by the integration project. Stretching the metaphor a bit further, one might say that the parties would seek prevention, by precluding the possibility of a number of ‘risks’, rather than insurance against the damage created by unforeseen risks.

This is not to say that countries are not confronted with real risks. The insurance paradigm is highly relevant when we consider real-world developments that are indeed unforeseeable, such as cyclical instability, or the impact of future structural economic developments (e.g. shifts in consumer demand, new technologies) in a single market, or the impact of economic and monetary integration on industrial specialization and/or regional or sub-regional agglomeration effects. In Section 4, I explained why and how insurance fits into a conception of justice between European member states that are confronted with economic shocks: these are risks. But a number of the ‘risks’ indicated by Sangiovanni are not ‘risks’ in the proper sense. *Contra* Sangiovanni, the appropriate thought experiment on which an account of justice between EU member states should be based, is one where the member states choose principles, rather than take insurance. The word ‘choosing’, as applied in a normative account of justice, should be understood correctly. In such a normative account, the ‘choosing’ of principles of cooperation is not a free-floating exercise: it is constrained by the account of justice we deem appropriate for the domestic social order of any nation state. Formulating it more precisely, in a normative account of social justice, nation states that constitute a union such as the EU, are supposed to base their domestic social order on a set of egalitarian principles, which therefore *must* constitute binding constraints on their cooperation in the EU.

In a nutshell, the upshot of the preceding discussion can be summarized as follows: justice demands that the scheme of cooperation embodied in the EU respects and is constrained by a set of domestic egalitarian principles which *must* inform the

aspirations of the member states, and therefore ought to be *shared* aspirations. Whilst this is an important conclusion – it justifies the political fight to obtain a common agreement on a number of fundamental principles of social policy at the EU level – it nevertheless leaves one question unanswered: what kind of cooperative schemes should welfare states set up? Sangiovanni broaches this question in his work on the EU, referring to ‘public goods’ provided by economic and monetary integration. However, it still remains the question whether the creation of a cooperative scheme like the EU is in one or other way *required* by the pursuit of social justice. Sangiovanni provides a ‘reactive’ theory of justice between EU member states: rather than justifying an initial scheme of cooperation, it sets constraints. Claassen correctly criticizes this “two-step methodology” because it “can criticize unbalanced packages of cooperation (some parties facing high risks of co-operation while others do not), it cannot deal with choices between existing and other possible balanced packages of cooperation.”⁶⁸

7. Moral cosmopolitanism, welfare state solidarity and the EU experiment

Is there a normative rationale, pertaining to social justice, for setting up the EU? Van Parijs gives a resolutely affirmative answer to that question: “[t]he creation and development of a club of relatively rich countries is compatible with, and 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.”⁶⁹ For Van Parijs, what the EU ‘is supposed to do’ is clear: the EU is a laboratory for global distributive justice; it must become a *Provider* of transnational interpersonal redistribution. Van Parijs combines two arguments to make the case for transnational interpersonal redistribution, a positive and a negative one. The negative argument is about avoiding the collapse of national welfare states in the face of the pressure created by market integration, monetary unification and free movement: the creation of a “sturdy EU-wide common floor” (preferably a pan-European basic income) would prevent this. This is the ‘augmented’ background justice argument (background justice among nation states that aspire to be welfare states), which I discussed in Section 5; as an account in support of basic income, I deem it unconvincing. Van Parijs’s positive argument is about the goal of achieving egalitarian justice at the supranational level. In the pursuit of that positive goal, national welfare states should be “demoted from the framework to the toolbox”, according to Van Parijs, and global distributive justice should be given logical priority over domestic distributive justice.⁷⁰ However, the exact meaning of the latter statement remains ambiguous, as I explain elsewhere:⁷¹ Van

⁶⁸ R. Claassen, European Duties of Social Justice: A Kantian Framework, in: *Journal of Common Market Studies*, Vol. 57, No. 1, 2019, p. 48.

⁶⁹ P. Van Parijs, *Just Europe*, *op. cit.*, p. 23.

⁷⁰ P. Van Parijs, International Distributive Justice, in: R.E. Goodin, P. Pettit and T. Pogge (eds.), *A Companion to Contemporary Political Philosophy*, Blackwell, Volume 2, 2007, p. 652

⁷¹ F. Vandenbroucke, The idea of a European Social Union. A Normative Introduction, in: F. Vandenbroucke, C. Barnard, Geert de Baere, *A European Social Union after the Crisis*, Cambridge: Cambridge University Press, 2017, pp. 40-43.

Parijs does not really envisage the ultimate consequences of seeing national welfare states as merely the instruments of supranational distributive justice and of giving priority to international distributive. Should the poor in the richest countries accept a reduction (or a lesser increase) in their standard of living if such a sacrifice maximizes the improvement that can be realized for the poor in the poorest countries? For moral cosmopolitans who also cherish national welfare state solidarity, that would create a tragic dilemma. Or, are we assured, on empirical grounds, that such a dilemma can be avoided and therefore does not constitute a relevant moral problem? Or, is global distributive justice satisfied when all inhabitants of the world can fulfil a set of basic needs – which considerably changes and mitigates the terms of the said dilemma?⁷²

Contra Van Parijs, one can also argue that the ‘instrumental view’ of national welfare states does not follow logically from accepting the validity of cosmopolitan demands of egalitarian justice. By way of example, Banai and Kollar present an account of global equality of opportunity with a permissible scope for collective self-determination that is not merely instrumentally motivated.⁷³ Rather than giving ‘logical priority’ to global distributive justice over domestic distributive justice, they reason in terms of the mutual accommodation of self-determination and global equality of opportunity. In that view, the EU might be a laboratory experiment about the compatibility of moral cosmopolitanism and the conviction that existing national welfare state solidarities should be cherished. That is, the relevant experiment is neither about a scheme whereby national welfare states are merely instruments for supranational distributive justice, nor about ‘background justice’ whereby the EU is merely an instrument in the hands of the member states. What is to be tested in the European lab is a scheme of supranational cooperation in which the pursuit of domestic distributive justice, the pursuit of global egalitarian standards and room for national diversity are accommodated. Accommodating demands of domestic justice and global justice would both connect with the original inspiration of the founding fathers of the European project (who thought that upward convergence in prosperity across Europe, driven by economic integration, and developing robust national welfare states were mutually compatible, desirable objectives) and have self-standing moral force, as an interpretation of what ‘moral cosmopolitanism’ demands.

A global egalitarian standard, framed in terms of real opportunity, requires that no one is disadvantaged because of the country where he or she is born. This demanding ideal cannot be achieved here and now, even when we confine the challenge to the EU. The

⁷² The dilemma is particularly acute if both domestic and global egalitarian justice are understood as implying a ‘maximin’ rule with regard to the worst-off. It is less acute if global egalitarian justice is understood as demanding the fulfillment of basic needs, as in G. Brock, *Global Justice. A Cosmopolitan Account*, Oxford: Oxford University Press, 2009.

⁷³ A. Banai and E. Kollar, Reading bedtime stories to compatriots: Reconciling global equality of opportunity and self-determination, *Review of International Studies*, Vol. 45, No. 3, 07/2019, pp. 367-386.

relevant question is about the best pathway to this ideal. Should we achieve it by means of transnational interpersonal redistribution? Cutting short a debate that would warrant more space, it seems that setting up a scheme of interpersonal cross-border redistribution and integrating this in the existing welfare edifice of the member states without jeopardizing them, is so difficult that it is implausible. That sobering conclusion follows from considering proposals with regard to pan-European basic income (cf. Section 5), but it also emerges from simulations about redistributive pan-European taxation. On the basis of plausible assumptions with regard to the income redistribution that is aimed at by means of a so-called ‘optimal income tax’, in most of the richer member states an *EU-wide optimal income tax* implies a significant loss of income for citizens with a median income, as compared to how they would fare under a *national optimal income tax*: this makes an EU-wide optimal income tax politically unfeasible.⁷⁴ The feasibility problem is fundamental, at least if one cherishes both social cohesion within national welfare states and across the EU: it is intrinsically related to the disparate levels of average labour productivity across the EU. Are there alternative pathways towards the same ideal? Think about a scheme of cooperation that actively promotes upward convergence in productivity and prosperity among the participating member states and instructs all participating member states to organize an adequate system of minimum protection, so as to guarantee all citizens access to the standard of living that is required for participation in their society (as proposed by EMIN and EAPN)⁷⁵. If such a scheme of cooperation effectively delivers on upward convergence across member states and decent minimum income protection is implemented in each member state, it will gradually create a more or less uniform ‘sturdy floor’ for all European citizens (but a ‘sturdy floor’ is not necessarily a basic income). Thus, this two-pronged strategy – convergence across member states, cohesion within member states – would serve demands of justice.

I should add the following thought: the normative argument for instructing all EU member states to implement adequate minimum income protection is not only based on a reasoning *in abstracto* about moral cosmopolitanism and national welfare states, at least not in my view. There is also a more contingent, EU-specific argument, leading from the principle of free movement to the need for decent minimum income protection in each member state; space forbids to elaborate on this argument here.⁷⁶ However, if free movement is a premise of an argument about the need for adequate minimum

⁷⁴ L. Seelkopf and H. Yang, European fiscal solidarity: an EU-wide optimal income tax approach, *International Journal of Public Policy*, Vol. 14, Nos. 1-2, 2018, pp. 145-161

⁷⁵ See fn. 4.

⁷⁶ See F. Vandenbroucke F. (2019) EU Citizenship Should Speak Both to the Mobile and the Non-Mobile European. In: Bauböck R. (eds) *Debating European Citizenship*. IMISCOE Research Series. Springer, Cham (first online 13 September 2018), pp. 211-217. The argument on the imperative of adequate minimum protection in each member state, should be complemented by a discussion on the European coordination of rights in the realm of minimum income protection for mobile citizens, as in Renuy, *op. cit.*

income protection in each EU member state, one should acknowledge the contingent historical context on which it draws. As already said, free movement cannot be justified independently of the broader geopolitical considerations that justify the European project. Hence, our overall thinking about justice in the EU cannot be cut loose from the geopolitical origin and context of European integration.

Emphasizing upward convergence does not imply that interstate redistribution is not on the EU's agenda. If the EU is to address climate change, it is legitimate to compensate the less-developed member states for the efforts they have put up (as the Commission now proposes). But the case for interstate solidarity is not confined to climate change: upward convergence, if we mean it, cannot be achieved by market integration alone: it requires support for disadvantaged regions, which implies *inter alea* between-country redistribution. Steady upward convergence also requires the prevention of severe economic shocks, i.e. stabilization.⁷⁷

Wrapping up the argument, a European scheme of cooperation that aims at upward convergence would have to include different variants of *support*: regulatory and material support to sustain upward convergence, and interstate insurance against severe financial and economic shocks. It would also include a mixture of *guidance* and *guarantees* (with regard to the quality of domestic socio-economic stabilizers, notably unemployment insurance, when the interstate insurance is to support domestic unemployment insurance; domestic minimum income protection and the adequacy of minimum wages). In this way, it would organize a degree of convergence between the social systems of the participant member states, not across the board but with regard to some key aspects of the organization of welfare state solidarity. Contra Schelkle, I would argue that the organization of solidarity implies limits to the diversity across member states.

8. *Envoi*: insurance and income redistribution in a European Social Union.

This paper deliberately focused on a narrow set of questions, hinging on a thin definition of 'welfare state solidarity', an umbrella concept encompassing insurance and redistribution.⁷⁸ The narrow focus was deliberate: it highlights the difference between arguments about redistribution and arguments about insurance in the context of the EU. If, one day, upward convergence would lead to similar levels of prosperity across the

⁷⁷ Economic instability explains why economic convergence across Europe has been, in the long run, limited; see T. Blanchet, L. Chancel, A. Gethin, *How Unequal is Europe? Evidence from Distributional National Accounts, 1980-2017*, WID.world Working Paper No. 2019/06, April 2019.

⁷⁸ Although the notion of 'solidarity' has occurred frequently in EU documents and declarations over the last 60 years, its exact meaning is rarely defined. Its scope is definitely larger than the scope in this paper; it may be better to think in term of 'European solidarities'; see R. Coman, et al., *op. cit.*, for historical analyses and interpretation of 'European solidarities'. In their study of public attitudes towards European solidarity, Gerhards et al., *op. cit.*, distinguish fiscal solidarity, territorial solidarity, welfare solidarity, internal and external refugee solidarity.

EU, there is no reason to organize redistribution across borders (setting aside contingent arguments for cross-border redistribution such as the compensation of climate change policies or efforts invested in the integration of refugees). If they attain similar levels of economic development, redistribution within the member states suffices to satisfy the demands of moral cosmopolitanism; at the level of member states, the relevant economic ‘circumstances’ then have become identical.⁷⁹ The argument with regard to insurance is radically different in this respect: even among states with similar levels of development, risk sharing always remains beneficial.

It is not only the case that the arguments are different. As indicated earlier, at the EU level it is conceivable to dissociate (or ‘disentangle’) redistribution and insurance, in contrast to what is common practice within national welfare states. Interstate insurance can be ‘pure insurance’, and yet be an instrument of social justice. In other words, the EU can become a ‘community of risk’, even if it is not, in the very long term, a polity that systematically and permanently redistributes across borders. Does this mean that all welfare state functions can be disentangled at the EU level? No, that is not the conclusion. Recall that the functions of national welfare state include not only insurance and redistribution, but also social investment, care and capacitating services. If the re-insurance of national unemployment insurance systems has to be accompanied by minimum requirements with regard to the quality of national activation and training policies – which is the case, so I argue –, two welfare state functions are *de facto* reconnected and combined at the EU level: insurance and social investment. This adds to other arguments, not discussed in this paper, as to why the EU should also play a role in the promotion of social investment policies.⁸⁰ And recall that upward convergence necessitates efforts to support disadvantaged regions, which implies interstate redistribution in the foreseeable future.

My exploration of the various arguments at play leads to the conclusion that the EU should become a European Social Union, i.e. a union that supports the member states’ welfare states in some of their key functions, on the basis of common social standards and in pursuit of upward convergence. Such a union would be a (selective) *Support*, *Guide* and *Guarantor*, both in the realm of insurance and redistribution. Through the establishment of interstate insurance, it would be a true ‘insurance union’, but, from the point of view of individual citizens, it would not become a direct *Provider* of insurance. Although subsidiarity would be an organizing principle of such a Social Union, it requires a basic consensus on fundamental principles of social policy. With regard to its

⁷⁹ Between countries with a similar level of economic prosperity, there are *prima facie* (pace differences in coping with climate change, refugee crises, etc.) no differences in economic ‘circumstances’ that call for (between-country) redistribution, using my definition of ‘redistribution’ in Section 1.

⁸⁰ See F. Vandenbroucke and D. Rinaldi, Social inequalities in Europe – The challenge of convergence and cohesion. In: Vision Europe Summit Consortium (eds.): *Redesigning European welfare states – Ways forward*, Gütersloh, 2015, pp. 38-77. For a broader discussion, see A. Hemerijck, (ed.), *The uses of social investment*, Oxford: Oxford University Press, 2017.

normative foundations, a Social Union is about much more than ‘background justice’ among nation states that aspire to retain as much social sovereignty as possible.

Without taking into account geopolitical considerations that explain the historical point and purpose of the EU, a normative exploration of the EU’s social mission lacks context and is bound to be a highly abstract exercise; it may even be difficult to bring it to a clear conclusion. Nevertheless, normative theorizing on justice is indispensable. European debates, including debates on the EU’s social dimension, are often dominated by functionalist arguments. Functional arguments have a limited purchase: our thinking about what the EU ‘needs to function well’ is always on a bridge between functional arguments and what we believe to be valuable shared aspirations.

Admittedly, crucial questions on the EU’s role in social protection remain unanswered in this paper. I distinguished the role of *Guide* and the role of *Guarantor*. Although I did not elaborate on it, that distinction is crucial to the EU as a polity and the subject matter of much debate. The ‘guide/guarantor’ distinction encompasses two questions. One is about whether EU policies should speak to national policy-makers (as the EU does, in its various coordination cycles that organize ‘guidance’) rather than to individual citizens. Another question is about the extent to which the EU’s current ‘soft guidance’ should be reinforced by ‘harder instructions’, that may amount to ‘guarantees’. These questions raise both issues of ‘efficiency’ (what is the most efficient way to achieve desirable outcomes, in an ‘experimental’ polity as diverse as the EU: soft guidelines or binding instructions?) and ‘citizenship’ (are there fundamental reasons, next to efficiency of delivery, as to why the EU should speak directly to citizens and be seen as the ‘guarantor’ of individual rights; should the ‘guarantee’ take the form of justiciable individual rights?). The arguments explored in this paper do not lead to a straightforward conclusion in that respect. Ferrera has tabled a “freestanding political justification” for the idea of a European Social Union which bears – at least in my understanding – on that question. A territorially organized collectivity cannot survive and prosper without a diffuse support by its members, capable of motivating compliance beyond self-interest. According to Ferrera, organized solidarity “came to play a key role for political legitimation by nurturing positive feelings about the effectiveness and fairness of the territorial government.”⁸¹ In yet other words, a European Social Union is a necessary ‘political good’ for the EU.⁸² If the organization of solidarity is key to the legitimacy of and public support for a political entity, the logic of that argument is that the EU should speak directly to its citizens about solidarity, rather than only indirectly through national policy-makers. Or, it should do so at least in some key domains of social policy. Whilst pragmatic efficiency arguments in a union that is so diverse as the

⁸¹ M. Ferrera, *Crafting the European Social Union. Towards a Road Map for Delivery*, in: M. Ferrera (ed.), *op. cit.*, p. 21.

⁸² M. Ferrera, *The European Social Union: A Missing but Necessary ‘Political Good’*, in: F. Vandenbroucke, C. Barnard, G. de Baere (eds.), *op. cit.*, pp. 47-67.

EU may call for governance on the basis of 'guidance', the political legitimacy argument may call for the EU as a perceptible 'guarantor of rights'. How to strike the balance between *Guide* and *Guarantor*, and how to understand the role of *Guarantor*, needs further research.